

# *The* **NORTH CAROLINA REGISTER**

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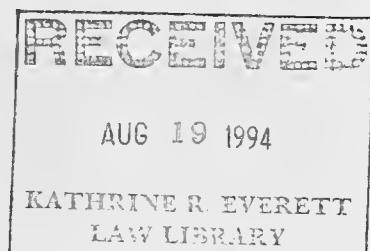
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**ISSUE DATE: August 15, 1994**

**Volume 9 • Issue 10 • Pages 667 - 779**



## **INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE**

### **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447.

### **ADOPTION, AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

### **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

### **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 30 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

### **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issue on April 1, 1986.

**FOR INFORMATION CONTACT:** Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

# **NORTH CAROLINA REGISTER**



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# NORTH CAROLINA REGISTER

## *Publication Schedule*

*(April 1994 - January 1995)*

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94
9:5	06/01/94	05/10/94	05/17/94	06/16/94	07/01/94	07/20/94	09/01/94
9:6	06/15/94	05/24/94	06/01/94	06/30/94	07/15/94	07/20/94	09/01/94
9:7	07/01/94	06/10/94	06/17/94	07/18/94	08/01/94	08/22/94	10/01/94
9:8	07/15/94	06/23/94	06/30/94	08/01/94	08/15/94	08/22/94	10/01/94
9:9	08/01/94	07/11/94	07/18/94	08/16/94	08/31/94	09/20/94	11/01/94
9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
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9:12	09/15/94	08/24/94	08/31/94	09/30/94	10/17/94	10/20/94	12/01/94
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9:14	10/14/94	09/23/94	09/30/94	10/31/94	11/14/94	11/21/94	01/01/95
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

*This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.*

\* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

\*\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NO. 59**  
**GOVERNOR'S TASK FORCE ON**  
**DRIVING WHILE IMPAIRED**

WHEREAS, the operation of motor vehicles on our highways by persons while impaired constitutes a serious threat to the health and safety of our citizens; and

WHEREAS, a large portion of the fatal accidents on our highways are alcohol related; and

WHEREAS, the Governor's Five-Year Highway Safety Initiative is now in its second year and is preparing to make driving while impaired its area of emphasis; and

WHEREAS, the State of North Carolina must consider strong measures designed to deter and prevent the operation of motor vehicles by persons while impaired;

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

**Section 1. Establishment.**

The Governor's Task Force on Driving While Impaired is established. The Task Force shall be an ad hoc committee of the Governor's Highway Safety Commission. The Task Force shall be composed of not more than thirty-five members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chair and one as Vice Chair. The members of the Governor's Highway Safety Commission shall be ex officio, voting members of the Task Force. Additional members shall include, but not be limited to, representatives of law enforcement, the judicial system and the General Assembly.

**Section 2. Meetings.**

The Task Force shall meet regularly at the call of the Chair and may hold special meetings at any time at the call of the Chair, or the Governor. The Task Force is authorized to conduct public hearings.

**Section 3. Expenses.**

Members of the Task Force shall be reimbursed for such necessary travel and subsistence expenses as are authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Governor's

Highway Safety Program.

**Section 4. Duties.**

The Task Force shall have the following duties:

- (a) Review the General Statutes of North Carolina applicable to driving while impaired;
- (b) Review proposals in other states designed to deter driving while impaired;
- (c) Consider proposals for North Carolina;
- (d) Recommend actions to reduce driving while impaired; and
- (e) Other such duties as assigned by the Chair or the Governor.

**Section 5. Reports.**

The Task Force shall present a report to the Governor no later than January 10, 1995. The Task Force shall be dissolved when its report is presented to the Governor.

This Order is effective immediately and shall expire January 31, 1995.

Done in the Capital City of Raleigh, North Carolina, this the 26th day of July, 1994.

**TITLE 10 - DEPARTMENT OF  
HUMAN RESOURCES**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that DHR, Secretary's Office intends to adopt rules cited as 10 NCAC 10 .0001 - .0005.

**The proposed effective date of this action is November 1, 1994.**

**Instructions on How to Demand a Public Hearing** (must be requested in writing within 15 days of notice): Written demand for a public hearing may be directed to Jack Jenkins, General Counsel, N.C. Department of Human Resources, 101 Blair Drive, Raleigh, NC 27603 on or before September 8, 1994.

**Reason for Proposed Action:** 45 CFR 80.7, a grievance procedure in order for the Department to be in full compliance in which to continue to receive federal monies.

**Comment Procedures:** Written comments may be directed to Jack Jenkins, General Counsel, N.C. Department of Human Resources, 101 Blair Drive, Raleigh, NC 27603 on or before September 14, 1994.

**CHAPTER 1 - DEPARTMENTAL RULES**

**SUBCHAPTER 10 - TITLE VI OF THE  
CIVIL RIGHTS ACT OF 1964 GRIEVANCE  
PROCEDURES**

**.0001 APPLICABILITY AND SCOPE**

This Subchapter provides for the prompt and equitable resolution of complaints against any program or activity administered by the Department of Human Resources, which receives federal financial assistance, alleging discrimination based upon race, color, or national origin in violation of Title VI of the Civil Rights Act of 1964.

*Authority G.S. 143B-10(j)(2); 45 C.F.R. Part 80.7.*

**.0002 COMPLAINTS**

(a) A complaint shall be filed in writing, contain the name and address of the person filing it, or his designee and briefly describe the alleged violation of 45 CFR Part 80.

(b) A complaint shall be filed with the appropri-

ate division or institution ADA Coordinator not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Secretary of the Department of Human Resources or his designee.

*Authority G.S. 143B-10(j)(2); 45 C.F.R. Part 80.7.*

**.0003 INVESTIGATION**

An investigation of the allegations of the complaint shall be conducted by the ADA Coordinator or his designee. The investigation shall afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to the complaint.

*Authority G.S. 143B-10(j)(2); 45 C.F.R. Part 80.7.*

**.0004 RESOLUTION OF MATTERS**

(a) If the investigation indicates a failure to comply with the Act, the Division Director or his designee will so confirm the recipient and the matter will be resolved by informal means whenever possible.

(b) If the matter cannot be resolved by informal means, then the Division Director or his designee shall refer the matter to the United States Department of Justice with a recommendation that appropriate proceedings be brought or proceed under any applicable state or local law.

(c) If an investigation does not reveal a compliance issue, the ADA Coordinator or his designee will inform the recipient and the complainant, if any, in writing within 30 days after the investigation has been completed.

*Authority G.S. 143B-10(j)(2); 45 C.F.R. Part 80.7.*

**.0005 RECONSIDERATION**

The complainant or recipient may request a reconsideration in accordance with the law applied in which the complaint was resolved.

*Authority G.S. 143B-10(j)(2); 45 C.F.R. Part 80.7.*

\* \* \* \* \*

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rule cited as 10 NCAC 3R .0305.

**The proposed effective date of this action is November 1, 1994.**

**T**he public hearing will be conducted at 10:00 a.m. on September 14, 1994 at the Council Building, 701 Barbour Drive, Room 201, Raleigh, NC 27603.

**R**eason for Proposed Action: Revises the certificate of need (CON) application fees to comply with Senate Bill 204 which was ratified on July 18, 1993 and requires the CON Section to generate sufficient revenue to offset the entire cost of the CON Program.

**C**omment Procedures: All written comments must be submitted to Jackie Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626 no later than September 15, 1994, oral comments may be made at the hearing.

**E**ditor's Note: This Rule was filed as a temporary amendment effective August 12, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

## CHAPTER 3 - FACILITY SERVICES

### SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

#### SECTION .0300 - APPLICATION AND REVIEW PROCESS

##### .0305 FILING APPLICATIONS

(a) An application will not be reviewed by the agency until it is filed in accordance with this Rule.

(b) An original and a copy of the application shall be received by the agency no later than 5:00 p.m. on the last working day prior to 15 days before the first day of the scheduled review period. An application will not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the following formula:

- (1) With each application proposing ~~no capital expenditure or~~ the addition of a sixth bed to an existing or approved five bed intermediate care facility for the mentally retarded, the proponent shall transmit a fee in the amount of two thousand dollars (\$2,000).
- (2) With each application, other than those

referenced in Subparagraph (b)(1) of this Rule, proposing ~~no capital expenditure or~~ a capital expenditure of up to, but not including, ~~five hundred thousand~~ ~~one million~~ dollars (\$500,000 ~~\$1,000,000~~), the proponent shall transmit a fee in the amount of ~~two thousand five hundred~~ ~~three thousand seven hundred fifty~~ dollars (\$2,500 ~~\$3,750~~).

(3) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing a capital expenditure of ~~five hundred thousand~~ ~~one million~~ dollars (\$500,000 ~~\$1,000,000~~) or greater, the proponent shall transmit a fee in the amount of ~~two thousand five hundred dollars~~ (\$2,500) ~~three thousand seven hundred fifty dollars~~ (\$3,750), plus an additional fee equal to ~~.0025 .003~~ of the amount of the proposed capital expenditure in excess of ~~five thousand dollars~~ (\$500,000) ~~one million dollars~~ (\$1,000,000). The additional fee shall be rounded to the nearest whole dollar. In no case shall the total fee exceed seventeen thousand five hundred dollars (\$17,500).

(c) After an application is filed, the agency shall determine whether it is complete for review. An application shall not be considered complete if:

- (1) the requisite fee has not been received by the agency; or
- (2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(e) Information requested by the agency to complete the application must be received by the agency no later than 5:00 p.m. on the last working day before the first day of the scheduled review period. The review of an application will commence in the next applicable review period that commences after the application has been determined to be complete.

(f) If an application is withdrawn by the applicant before the first day of the applicable review

period, the application fee, if paid, will be refunded to the applicant.

*Statutory Authority G.S. 131E-177; 131E-182; S.L. 1983, c. 713.*

**TITLE 12 - DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Sheriffs' Education and Training Standards Commission intends to amend rules cited as 12 NCAC 10B .0204 -.0205, .0502, .0904, .2101 -.2102 and .2105.*

*The proposed effective date of this action is January 1, 1995.*

*The public hearing will be conducted at 9:00 a.m. on September 14, 1994 at the Regional High Technology Center, 10 Industrial Park Drive, Waynesville, North Carolina 28786.*

**Reason for Proposed Action:** *To make various technical changes for purposes of updating and clarifying existing rules.*

**Comment Procedures:** *Any person interested in these rules may present oral or written comments relevant to the proposed action at the public rule making hearing. Written statements can be submitted beginning August 15, 1994 through September 14, 1994 and must be directed to the Sheriffs' Standards Division. The proposed rules are available for public inspection and copies may be obtained at the following address: Dept. of Justice, Sheriffs' Standards Division, PO Box 629, Raleigh, NC 27602-0629.*

**CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

**SUBCHAPTER 10B - NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

**SECTION .0200 - ENFORCEMENT RULES**

**.0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke or deny the

certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a felony unless pardoned by the Governor; or
- (2) a crime for which the authorized punishment could have been imprisonment for more than two years.
- (b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:
  - (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a time period specified by the Commission; or
  - (2) fails to meet or maintain any of the minimum employment or certification standards required by 12 NCAC 10B .0300; or
  - (3) fails to satisfactorily complete the minimum in-service training requirements as presented in 12 NCAC 10B .2000 and .2100; or
  - (4) has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(b)(4) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6); or
  - (5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6), unless the positive result is explained to the Commission's satisfaction.
- (c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:
  - (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
  - (2) has knowingly and designedly by any means of false pretense, deception,

(3) fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

(3) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or

(4) has been removed from office by decree of the Superior Court in accordance with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230- ; or

(5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission.

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification; or

(2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment; or

(3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; or

(4) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or

(5) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor except the applicant may be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or

(6) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

(e) Without limiting the application of G.S. 17E, a person who has had his certification suspended or revoked may not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.

(f) Without limiting the application of G.S. 17E, a person who has been denied certification may not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.

*Statutory Authority G.S. 17E-7.*

**.0205 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL**

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(1) permanent where the cause of sanction is:

(a) commission or conviction of a felony; or

(b) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or

(c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Item (2) of this Rule.

(2) not less than five years where the cause of sanction is:

(a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1) and (4); or

(b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards

Commission; or

(c) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

(d) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aiding another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or

(e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7); or

(f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or

(g) a positive result on a drug screen, or a refusal to submit to drug testing both pursuant to 12 NCAC 10B .0301 and 12 NCAC 10B .0406, or in connection with an application for certification as a criminal justice officer as defined in 12 NCAC 9A .0103(6).

(h) the Commission may either reduce or suspend the periods of sanction under this item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the discretion of the Commission.

(3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

(a) failure to meet or satisfy relevant basic training requirements; or

(b) failure to meet or maintain the minimum standards of employment or cer-

tification; or

(c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .2100; or

(d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1), (2), (3), (5), and (6); or

(e) denial, suspension, or revocation of certification pursuant to 12 NCAC 10B .0204(c)(5).

*Statutory Authority G.S. 17E-4; 17E-7.*

**SECTION .0500 - MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFFS**

**.0502 BASIC LAW ENFORCEMENT TRAINING COURSE FOR DEPUTIES**

(a) The Commission hereby adopts as its required minimum Basic Law Enforcement Training Course 444 hours of instruction to include the following identified topic areas and minimum instructional hours for each area:

(1)	Course Orientation	2 hours
(2)	Constitutional Law	4 hours
(3)	Laws of Arrest, Search and Seizure	16 hours
(4)	Mechanics of Arrest; Arrest Procedure	8 hours
(5)	Law Enforcement Communications and Information Systems	4 hours
(6)	Elements of Criminal Law	24 hours
(7)	Defensive Tactics	16 hours
(8)	Juvenile Laws and Procedures	8 hours
(9)	First Responder	40 hours
(10)	Firearms	40 hours
(11)	Patrol Techniques	16 hours
(12)	Crime Prevention Techniques	4 hours
(13)	Field Notetaking and Report Writing	12 hours
(14)	Mechanics of Arrest: Vehicle Stops	6 hours
(15)	Mechanics of Arrest: Custody Procedures	2 hours
(16)	Mechanics of Arrest: Processing Arrestee	4 hours
(17)	Crisis Management	10 hours
(18)	Special Populations	12 hours
(19)	Civil Disorders	8 hours
(20)	Criminal Investigation	28 hours
(21)	Interviews: Field and In-Custody	8 hours
(22)	Controlled Substances	6 hours
(23)	ABC Laws and Procedures	4 hours
(24)	Electrical and Hazardous Material	

	Emergencies	12 hours
(25)	Motor Vehicle Law	20 hours
(26)	Techniques of Traffic Law Enforcement	6 hours
(27)	Law Enforcement Driver Training	16 hours
(28)	Preparing For Court and Testifying in Court	12 hours
(29)	Dealing with Victims and the Public	8 <u>4</u> hours
(30)	<u>Ethics of Professional Law Enforcement</u>	<u>4 hours</u>
(31)	(30) Civil Process	24 hours
(32)	(31) Supplemental Custody Procedures	8 hours
(33)	(32) Physical Fitness Training	43 hours
(34)	(33) Testing	13 hours

TOTAL HOURS 444 hours

(b) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy is hereby adopted by reference, and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c), to apply as basic curriculum for this Basic Law Enforcement Training Course.

(c) Consistent with the curriculum development policy of the Commission, the Commission shall designate the developer of the Basic Law Enforcement Training Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Basic Law Enforcement Training Courses. Individuals who successfully complete such a pilot Basic Law Enforcement Training Course offering shall be deemed to have successfully complied with and satisfied the minimum training requirement.

(d) The rules governing Minimum Standards for Completion of Training, codified as Title 12, Subchapter 9B, Section .0400 of the North Carolina Administrative Code, and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby adopted by reference, and shall, automatically include any later amendments and editions of the adopted matter as authorized by General Statute 150B-14(c) to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission.

*Statutory Authority G.S. 17E-4(a).*

## SECTION .0900 - MINIMUM STANDARDS

## FOR JUSTICE OFFICER INSTRUCTORS

### .0904 GENERAL JAILER INSTRUCTOR CERTIFICATION

An applicant for General Jailer Instructor Certification shall meet the following requirements:

- (1) Present documentary evidence demonstrating that the applicant:
  - (a) has attended and successfully completed the North Carolina Sheriffs' Education and Training Standards Commission - approved Jail Training Course; or holds a valid general or grandfather certification as a jailer or correctional officer; and
  - (b) holds General Instructor certification issued by the North Carolina Criminal Justice Education and Standards Commission.
- (2) Persons holding General Jailer Instructor Certification may teach any topical areas of instruction in the Commission - mandated course with the exception of those outlined in 12 NCAC 10B .0908(a)(1) through (7).

*Statutory Authority G.S. 17E-4.*

## SECTION .2100 - JUSTICE OFFICERS' FIREARMS IN-SERVICE TRAINING REQUALIFICATION PROGRAM

### .2101 DEPARTMENT HEAD RESPONSIBILITIES

The Department head is responsible for ensuring that the Justice Officers' In-Service Firearms Training and Requalification Program is conducted according to minimum specifications as outlined in 12 NCAC 10B .2103 and .2104. In addition, the Department head:

- (1) shall maintain copies of each course of fire adopted for use by his department and shall make those courses available for review by the Commission's representative upon request; and
- (2) shall maintain in each officer's personnel file a copy of a commission-approved Firearms Requalification Record Form which verifies that the officer did, or did not, successfully complete the minimum annual in-service firearms training requirement; and
- (3) may, where the officer fails to successfully qualify with any of the weapons specified in 12 NCAC 10B .2104 prohibit

access or possession of such weapon while on duty or when acting in the discharge of that agency's official duties and may deny the officer authorization to carry such weapons concealed when off-duty, except when the officer is on his/her own premises; and

(4) shall notify report to the Division within five days when an officer fails to qualify pursuant to 12 NCAC 10B .2105; and once each calendar year a roster of all justice officers who fail to successfully complete the annual in-service firearms training and qualification and shall certify that all justice officers required to qualify pursuant to 12 NCAC 10B .2104 who are not listed did successfully complete the training. This roster shall reflect the annual in-service firearms training and qualification status of all justice officers employed by the agency as of December 31st of each calendar year and shall be received by the Division no later than the following January 15th; and  
shall report to the Division not later than January 15th of each calendar year a list of those justice officers employed by the agency who are not authorized by the sheriff to carry a weapon; and

(5) (5) may ensure that once each year all officers receive a review of departmental policies regarding the use of force. It is recommended by the Commission that all officers be tested on departmental policies.

Statutory Authority G.S. 17E-4; 17E-7.

## .2102 INSTRUCTORS

The following requirements and responsibilities are hereby established for instructors who conduct the Justice Officers' In-Service Firearms Training and Requalification Program:

(1) The instructor shall hold "Specific Instructor Certification-Firearms" issued by the North Carolina Criminal Justice Education and Training Standards Commission;

(2) The instructor shall deliver the training consistent with the minimum specifications as established by 12 NCAC 10B .2103 and .2104; and shall be present at all times during which said training is being conducted to personally provide all supervision, classroom training, range

training, and scoring for certification purposes;

(3) The instructor shall document the successful or unsuccessful completion of training for each officer on a commission-approved Firearms Requalification Record Form and forward such form to each officer's department head;

(4) The instructor shall submit to the agency head copies of all courses of fire used for qualification of justice officers in compliance with 12 NCAC 10B .2101(1).

Statutory Authority G.S. 17E-4; 17E-7.

## .2105 FAILURE TO QUALIFY

(a) Justice officers who fail to qualify pursuant to Rule 12 NCAC 10B .2104 by December 31st of each calendar year shall immediately surrender their weapons to the sheriff, upon his request, and shall have 30 days in which to obtain the qualification score required in 12 NCAC 10B .2104. cease to carry weapons with which the justice officer failed to qualify.

(b) Failure to qualify within the 30 day time period allowed in 12 NCAC 10B .2105(a) will result in the summary suspension of the justice officer's certification by the Commission.

(c) No justice officer summarily suspended under Paragraph (b) of this Rule and in compliance with 12 NCAC 10B .0206(a)(3) may work as a certified justice officer until:

(1) the sheriff forwards to the Commission documentary evidence verifying that the officer has complied with the requirements of 12 NCAC 10B .2103 and .2104; and

(2) the justice officer and the sheriff receive from the Commission documentation that the Commission has terminated the suspension and reinstated the certification to the justice officer.

(d) Any justice officer previously unauthorized to carry a weapon but whose status changed to "authorized to carry a weapon," must comply with the provisions set out in 12 NCAC 10B .2103 and .2104; and may not carry a firearm until:

(1) the sheriff forwards to the Commission documentary evidence verifying that the officer has complied with the requirements of 12 NCAC 10B .2103 and .2104; and

(2) the justice officer and the sheriff receive from the Commission documenta-

tion that the Commission has amended the officer's status to "authorized to

carry a weapon" and all certification files reflect the same.

*Statutory Authority G.S. 17E-4; 17E-7.*

## **TITLE 13 - DEPARTMENT OF LABOR**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor/Division of Occupational Safety & Health intends to amend rule cited as 13 NCAC 07F .0101.

**T**he proposed effective date of this action is November 1, 1994.

**T**he public hearing will be conducted at 10:00 a.m. on September 7, 1994 at the Division of Occupational Safety & Health, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603.

**R**eason for Proposed Action: To clarify in the General Industry Standards the interpretation of who is responsible for providing personal protective equipment to employees, and to make clarifying amendments to 7F .0101(b).

**C**omment Procedures: Persons wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Division three business days prior to the hearing date. Written comments will be accepted until September 14, 1994. Direct all correspondence to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

**F**iscal Note: No expenditures of State or local funds is required by this proposed rule. A fiscal note was submitted to the Fiscal Research Division on July 22, 1994, OSBM on July 22, 1994, N.C. League of Municipalities on July 22, 1994, and N.C. Association of County Commissioners on July 22, 1994.

### **CHAPTER 7 - OSHA**

#### **SUBCHAPTER 7F - STANDARDS**

##### **SECTION .0100 - GENERAL INDUSTRY STANDARDS**

###### **.0101 GENERAL INDUSTRY**

(a) The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910, are incorporated by reference except as follows:

- (1) Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, §1910.120(q)(6) is amended by adding a new level of training:
  - "(vi) First responder operations plus level. First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First responders at the operations plus level shall have received at least training equal to first responder operations level and, in addition, shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:
    - (A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
    - (B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;
    - (C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, propane and other hydrocarbon fuels;

(D) Be able to perform control, containment, and/or confinement operations for gasoline, diesel fuel, propane and other hydrocarbon fuels within the capabilities of the available resources and personal protective equipment; and

(E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."

(2) Subpart 1 -- Personal Protective Equipment -- 29 CFR 1910.132, General requirements, is amended at 29 CFR 1910.132(b) to read: "(b) Equipment. (1) Employer-provided equipment. It is the responsibility of the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.

(2) Employee-owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment."

(3) (2) Subpart Z -- Toxic and Hazardous Substances, 29 CFR 1910.1000, Air Contaminants: Re-adoption of revised permissible exposure limits as originally published in 54 FR (January 19, 1989) pages 2496 -2533 and pages 2668 - 2695 as follows:

### "RESPIRATORY EFFECTS

Chemical Name	CAS No.	PEL
Aluminum	7429-90-5	15 mg/m <sup>3</sup> TWA Total Dust 5 mg/m <sup>3</sup> TWA Resp. fraction
Bismuth telluride, Undoped	1304-82-1	15 mg/m <sup>3</sup> TWA Total Dust 5 mg/m <sup>3</sup> TWA Resp. fraction
Chlorine dioxide	10049-04-4	0.1 ppm TWA 0.3 ppm STEL
Chromium metal (as Cr)	7440-47-3	1 mg/m <sup>3</sup> TWA
Coal Dust (<5% quartz) Resp. fraction	None	2 mg/m <sup>3</sup> TWA
Coal Dust (>5% quartz) Respirable quartz fraction	None	0.1 mg/m <sup>3</sup> TWA
Ethyl acrylate	140-88-5	5 ppm TWA 25 ppm STEL, Skin
Ferrovanadium dust	12604-58-9	1 mg/m <sup>3</sup> TWA 3 mg/m <sup>3</sup> STEL
Grain Dust (oat, wheat, barley)	None	10 mg/m <sup>3</sup> TWA
Graphite, natural, Resp. Dust	7782-42-5	2.5 mg/m <sup>3</sup> TWA
Indium & compounds (as In)	7440-74-6	0.1 mg/m <sup>3</sup> TWA
Iron oxide (dust & fume)	1309-37-1	10 mg/m <sup>3</sup> TWA
Methylene bis (4-Cyclohexylisocyanate)	5124-30-1	0.01 ppm Ceiling, Skin
Mica, Respirable Dust	12001-26-2	3 mg/m <sup>3</sup> TWA
Nitrogen dioxide	10102-44-0	1 ppm STEL
Oxygen difluoride	7783-41-7	0.05 ppm Ceiling
Ozone	10028-15-6	0.1 ppm TWA 0.3 ppm STEL
Paraquat, Respirable Dust	4685-14-7	0.1 mg/m <sup>3</sup> TWA, Skin
Silica, crystalline cristobalite, Respirable Dust	14464-46-1	0.05 mg/m <sup>3</sup> TWA
Silica, crystalline quartz, Respirable Dust	14808-60-7	0.1 mg/m <sup>3</sup> TWA
Silica, crystalline tridymite, Respirable Dust	15468-32-3	0.05 mg/m <sup>3</sup> TWA
Silica, crystalline tripoli (as quartz) Respirable Dust	1317-95-9	0.1 mg/m <sup>3</sup> TWA

Silica, fused	60676-86-0	0.1 mg/m <sup>3</sup> TWA
Respirable Dust		
Soapstone, total dust	None	6 mg/m <sup>3</sup> TWA
Soapstone, Respirable Dust	None	3 mg/m <sup>3</sup> TWA
Sulfur dioxide	7446-09-5	2 ppm TWA 5 ppm STEL
Sulfur tetrafluoride	7783-60-0	0.1 ppm Ceiling
Talc (containing no asbestos)	14807-96-6	2 mg/m <sup>3</sup> TWA
Respirable Dust		
Tin oxide (as Sn)	7440-31-5	2 mg/m <sup>3</sup> TWA
Trimellitic anhydride	552-30-7	0.005 ppm TWA
Wood dust, hard	None	5 mg/m <sup>3</sup> TWA 10 mg/m <sup>3</sup> STEL
Wood dust, soft	None	5 mg/m <sup>3</sup> TWA 10 mg/m <sup>3</sup> STEL
Wood dust, allergenic (Western Red Cedar)	None	2.5 mg/m <sup>3</sup> TWA

**AVOIDANCE OF CANCER**

Chemical Name	CAS No.	PEL
Acrylamide	79-06-1	0.03mg/m <sup>3</sup> TWA, Skin
Amitrole	61-82-5	0.2 mg/m <sup>3</sup> TWA
Carbon tetrachloride	56-23-5	2 ppm TWA
Chloroform	67-66-3	2 ppm TWA
Chromic acid	1333-82-0	0.1 mg/m <sup>3</sup> Ceiling
Dimethyl sulfate	77-78-1	0.1 ppm TWA, Skin
2-Nitropropane	79-46-9	10 ppm TWA
Perchloroethylene	127-18-4	25 ppm TWA
o-Toluidine	95-53-4	5 ppm TWA, Skin
p-Toluidine	106-49-0	2 ppm TWA, Skin
Vinyl bromide	593-60-2	5 ppm TWA
Vinyl cyclohexene dioxide	106-87-6	10 ppm TWA, Skin."

(3) Reserved

(4) Subpart Z -- Toxic and Hazardous Substances -- incorporation by reference of modified final rule for 29 CFR 1910.1200, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1910.1200(b)(6)(ii) is amended to read: "(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq*), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"

(b) The parts of the Code of Federal Regulations adopted by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:

(1) Subpart H -- Hazardous Materials:

(A) Technical corrections at 1910.109(g)(4)(v), Explosives and Blasting Agents, published in 58 FR (March 29, 1993) page 16496 and ~~adopted by the North Carolina Department of Labor~~ effective on December 31, 1993.

(B) Technical corrections at 1910.110(d)(11), Storage and Handling of Liquefied Petroleum Gases, published in 58 FR (March 19, 1993) page 15089 and ~~adopted by the North Carolina Department of Labor~~ effective on December 31, 1993.

(2) Subpart I -- Personal Protective Equipment -- addition of paragraphs (d), (e) and (f) to 1910.132 - *General requirements*; revisions to 1910.133 - *Eye and face protection*, 1910.135 - *Head protection*, 1910.136 - *Foot protection*; and addition of 1910.138 - *Hand protection*, including non-mandatory Appendices A and B, published in 59 FR (April 6, 1994) pages 16360 - 16364 and

adopted by the North Carolina Department of Labor effective on September 1, 1994; addition of paragraph (g) to 1910.132 - *General requirements*; technical and clarifying amendments to 1910.133 - *Eye and face protection*, 1910.136 - *Foot protection*, and 1910.138 - *Hand protection*, as published in 59 FR (July 1, 1994) pages 33910 - 33911 and effective on September 1, 1994;

(3) Subpart J -- General Environmental Controls -- typographical and clarifying corrections at 1910.146, Permit-Required Confined Spaces, published in 58 FR (June 29, 1993) pages 34844 - 34851 and adopted by the North Carolina Department of Labor effective on September 24, 1993; a metric equivalent addition of "1.52 m" to 1910.146 (k) (3) (ii) and revisions to "Atmospheric monitoring" section of Appendix E as published in 59 FR (May 19, 1994) pages 26114 - 26116 and adopted by the North Carolina Department of Labor effective on September 1, 1994; corrections are to final rule for Permit-Required Confined Spaces as originally published in 58 FR 4462 (January 14, 1993);

(4) Subpart Z -- Toxic and Hazardous Substances:

(A) Revocation of exposure limits in "Final rule limits" columns of Table Z-1-A at 1910.1000, Air Contaminants, published in 58 FR (June 30, 1993) pages 35338 - 35351 and adopted by the North Carolina Department of Labor effective on September 24, 1993.

(B) Correction to Table Z-3 Mineral Dust at 1910.1000, Air Contaminants, published in 58 FR (July 27, 1993) page 40191 and adopted by the North Carolina Department of Labor effective on December 31, 1993.

(C) Typographical and technical corrections at 1910.1027, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21787 and adopted by the North Carolina Department of Labor effective on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available to the public. Please refer to 13 NCAC 7A.0302 for the costs involved and from whom copies may be obtained.

*Statutory Authority G.S. 95-131; 95-133; 150B-21.6.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that EHN - Radiation Protection Commission intends to amend rules cited as 15A NCAC .0104, .0117, .0343, .0350 - .0351, .0502 - .0515, .0517 - .0520, .1625 and adopt rules cited as 15A NCAC 11 .0356 - .0357, .0521 - .0523.*

*The proposed effective date of this action is January 1, 1995.*

*The public hearing will be conducted at 1:00 p.m. and 7:00 p.m. on September 20, 1994 at the Division of Radiation Protection, 3825 Barrett Drive, Room 101, Raleigh, NC 27609.*

*Reason for Proposed Action: Regain compatibility required by federal law and North Carolina's 1964 agreement with the US Nuclear Regulatory Commission. The US Nuclear Regulatory Commission has withheld a finding of compatibility pending required adoption of these rules. Rule .1625 addresses concerns of the medical licensees.*

*Comment Procedures: Written comments may be submitted to the Division of Radiation Protection, Mr. Richard M. Fry, P.O. Box 27687, Raleigh, NC 27611-7687. Written comments will be received until October 20, 1994.*

*Editor's Note: These Rules were filed as temporary rules effective August 20, 1994 for a period of 180 days or until the permanent rules become effective, whichever is sooner.*

**CHAPTER 11 - RADIATION PROTECTION**

**SECTION .0100 - GENERAL PROVISIONS**

**.0104 DEFINITIONS**

As used in these Rules, the following definitions shall apply.

- (1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).
- (2) "Accelerator produced material" means any material made radioactive by use of a particle accelerator.
- (3) "Act" means North Carolina Radiation Protection Act as defined in G.S. 104E-1.
- (4) "Activity" is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).
- (5) "Adult" means an individual 18 or more years of age.
- (6) "Agency" means the North Carolina Department of Environment, Health, and Natural Resources.
- (7) "Agreement state" means any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Subsection 274b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).
- (8) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.
- (9) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:
  - (a) in excess of the derived air concentrations (DACs) specified in Appendix B to 10 CFR §§ 20.1001 - 20.2401, or
  - (b) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.
- (10) "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in the rules of this Chapter as is practical consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of sources of radiation in the public interest.
- (11) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of five rems (0.05 Sv) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2, of Appendix B to 10 CFR §§ 20.1001 - 20.2401).
- (12) "Annually" means at intervals not to exceed 12 consecutive months.
- (13) "Authorized representative" means an employee of the agency, or an individual outside the agency when the individual is specifically so designated by the agency under Rule .0112 of this Section.
- (14) "Authorized user" means an individual who is authorized by license or registration condition to use a source of radiation.
- (15) (14) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices. "Background radiation" does not include sources of radiation regulated by the agency.
- (16) (15) "Becquerel" is the SI unit of radioactivity. One becquerel is equal to one disintegration per second ( $s^{-1}$ ).
- (17) (16) "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(18) (17) "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(19) (18) "Class", "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times as follows:

CLASSIFICATION OF INHALED MATERIAL

<u>Class</u>	<u>Clearance half-time</u>
Class D (Day)	less than 10 days
Class W (Weeks)	10 days to 100 days
Class Y (Years)	greater than 100 days

(20) (19) "Collective dose" is the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(21) (20) "Commission" means the North Carolina Radiation Protection Commission.

(22) (21) "Committed dose equivalent" ( $H_{T,50}$ ) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(23) (22) "Committed effective dose equivalent" ( $H_{E,50}$ ) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ( $H_{E,50} = \sum w_T H_{T,50}$ ).

(24) (23) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

(25) (24) "Curie" is the special unit of radioactivity. One curie is equal to  $3.7 \times 10^{10}$  disintegrations per second =  $3.7 \times 10^{10}$  becquerels =  $2.22 \times 10^{12}$  disintegrations per minute.

(26) (25) "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(27) (26) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.

(28) (27) "Deep-dose equivalent" ( $H_d$ ), which applies to external whole-body exposure, is the dose equivalent at a tissue depth of one cm ( $1000 \text{ mg/cm}^2$ ).

(29) (28) "Department" means the North Carolina Department of Environment, Health, and Natural Resources.

(30) (29) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(31) (30) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate 1.2 cubic meters of air per hour), results in an intake of ALI. DAC values are given in Table 1, Column 3, of Appendix B to 10 CFR §§ 20.1001 - 20.2041).

(32) (31) "Derived air concentration-hour" (DAC-hour) is the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 Sv).

(33) "Diagnostic clinical procedures manual" means a collection of written procedures governing the use of radioactive material that describes each method by which the licensee performs diagnostic clinical procedures and includes other instructions and precautions; where prior to inclusion in the manual, each diagnostic clinical procedure including but not limited in content to the radiopharmaceutical dosage and route of administration, shall be approved by the authorized user and the radiation safety officer.

(34) (32) "Dose" (or radiation dose) is a generic term that means absorbed dose, dose equivalent, effective

dose equivalent, committed dose equivalent, effective dose equivalent, or total effective dose equivalent, as defined in other Items of this Rule.

(35) (33) "Dose equivalent" ( $H_T$ ) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(36) (34) "Dose limits" (see "Limits" defined in this Rule).

(37) (35) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.

(38) (36) "Effective dose equivalent" ( $H_E$ ) is the sum of the products of the dose equivalent to the organ or tissue ( $H_T$ ) and the weighting factors ( $w_T$ ) applicable to each of the body organs or tissues that are irradiated ( $H_E = \sum w_T H_T$ ).

(39) (37) "Embryo/fetus" means the developing human organism from conception until the time of birth.

(40) (38) "Entrance or access point" means any location through which an individual could gain access to radiation areas or to a source of radiation. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(41) (39) "Equipment services" means the selling, installation, rebuilding, conversion, repair, inspection, testing, survey or calibration of equipment which can affect compliance with these Rules by a licensee or registrant.

(42) (40) "Exposure" means being exposed to ionizing radiation or to radioactive material.

(43) (41) "Exposure rate" means the exposure per unit of time, such as R/min and mR/h.

(44) (42) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(45) (43) "Extremities" "Extremity" means that portion of the dose equivalent received from radiation sources outside the body hand, elbow, arm, arm below the elbow, foot, knee, or leg below the knee.

(46) (44) "Eye dose equivalent" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

(47) (45) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2D11 et seq.), as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using sources of radiation.

(48) (46) "Gray" (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule/kilogram (100 rads).

(49) (47) "High radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

(50) (48) "Hospital" means a facility that provides as its primary functions diagnostic services and intensive medical and nursing care in the treatment of acute stages of illness.

(51) (49) "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(52) (50) "Individual" means any human being.

(53) (51) "Individual monitoring" means:

- (a) the assessment of dose equivalent by the use of devices designed to be worn by an individual;
- (b) the assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or
- (c) the assessment of dose equivalent by the use of survey data.

(54) (52) "Individual monitoring devices" or "individual monitoring equipment" means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(55) (53) "Inhalation class" (see "Class" defined in this Rule).

(56) (54) "Inspection" means an official examination or observation to determine compliance with rules, orders, requirements and conditions of the agency or the Commission.

(57) (55) "Internal dose" means that portion of the dose equivalent received from radioactive material

taken into the body.

(58) (56) "License", except where otherwise specified, means a license issued pursuant to Section .0300 of this Chapter.

(59) (57) "Licensee" means any person who is licensed by the agency pursuant to Section .0300 of this Chapter.

(60) (58) "Licensing state" means any state designated as such by the Conference of Radiation Control Program Directors, Inc. Unless the context clearly indicates otherwise, use of the term Agreement State in this Chapter shall be deemed to include licensing state with respect to naturally occurring and accelerator produced radioactive material (NARM).

(61) (59) "Limits" or "dose limits" means the permissible upper bounds of radiation doses.

(62) (60) "Lost or missing licensed radioactive material" means licensed radioactive material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(63) (61) "Lung class" (see "Class" as defined in this Rule).

(64) (62) "Member of the public" means an individual in a controlled or unrestricted area; however, an individual is not a member of the public during any period in which the individual receives an occupational dose.

(65) (63) "Minor" means an individual less than 18 years of age.

(66) (64) "Misadministration" means the administration of the following:

(a) ~~a radiopharmaceutical or source of radiation other than the one intended;~~

(b) ~~a radiopharmaceutical or radiation to the wrong patient;~~

(c) ~~a radiopharmaceutical or radiation by a route of administration other than that intended by the prescribing physician;~~

(d) ~~a diagnostic dosage of a radiopharmaceutical or source of radiation differing from the prescribed dosage by more than 50 percent;~~

(e) ~~a therapy dosage of a radiopharmaceutical differing from the prescribed dosage by more than ten percent; or~~

(f) ~~a therapy radiation dose from a source of radiation such that errors in the source calibration, time of exposure, or treatment geometry result in a calculated total treatment dose differing from the final prescribed total treatment dose by more than ten percent.~~

(a) a diagnostic radiopharmaceutical dosage:

(i) involving a dose to the patient that exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ; and

(A) the wrong patient;

(B) the wrong radiopharmaceutical;

(C) the wrong route of administration; or

(D) an administered dosage that differs from the prescribed dosage; or

(ii) for sodium iodide I-125 or I-131 involving:

(A) the wrong patient or wrong radiopharmaceutical; or

(B) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries;

(b) a therapeutic radiopharmaceutical dosage:

(i) involving:

(A) the wrong patient;

(B) wrong radiopharmaceutical;

(C) wrong route of administration; or

(D) when the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or

(ii) when the administered dosage of sodium iodide I-125 or I-131 differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries;

(c) a teletherapy or accelerator radiation dose:

(i) involving:

(A) the wrong patient;

- (B) the wrong mode of treatment; or
- (C) wrong treatment site;

- (ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;
- (iii) when the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or
- (iv) when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose;

- (d) a brachytherapy radiation dose:
  - (i) involving:
    - (A) the wrong patient;
    - (B) the wrong radioisotope; or
    - (C) the wrong treatment site. This excludes, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site;
  - (ii) involving a sealed source that is leaking;
  - (iii) when, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or
  - (iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose; or
- (e) a gamma stereotactic radiosurgery radiation dose:
  - (i) involving the wrong patient or wrong treatment site; or
  - (ii) when the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.

(67) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(68) "Monitoring", "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(69) "Natural radioactivity" means radioactivity of naturally occurring nuclides.

(70) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).

(71) "NRC" means the United States Nuclear Regulatory Commission or its duly authorized representatives.

(72) "Occupational dose" means the dose received by an individual in a restricted area or in the course of employment in which the individual's assigned duties involve exposure to radiation or licensed radioactive material, whether in the possession of the licensee or registrant or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the general public.

(73) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles.

(74) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.

(75) "Personnel monitoring equipment" means devices, such as film badges, pocket dosimeters, and thermoluminescent dosimeters, designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.

(76) "Pharmacist" means an individual licensed by this state to compound and dispense drugs, prescriptions and poisons.

(77) "Physician" means an individual currently licensed to practice medicine in this state.

(78) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(79) "Prescribed dosage" means the quantity of radiopharmaceutical activity:  
(a) as documented in a written directive by an authorized user; and  
(b) that has been prescribed in accordance with the information contained in the diagnostic clinical procedures manual.

(80) "Prescribed dose" means:  
(a) for teletherapy or accelerator radiation:  
(i) the total dose; and  
(ii) the dose per fraction as documented in the written directive;  
(b) for brachytherapy:  
(i) the total source strength and exposure time; or  
(ii) the total dose, as documented in the written directive; or  
(c) for gamma stereotactic radiosurgery, the total dose as documented in the written directive.

(81) (77) "Public dose" means the dose received by a member of the public from exposure to radiation and to radioactive material released by a licensee or registrant, or to another source of radiation either within a licensee's or registrant's controlled area or in unrestricted areas. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(82) (78) "Quality factor" (Q) means the modifying factor that is used to derive dose equivalent from absorbed dose. Quality factors are provided in the definition of rem in this Rule.

(83) (79) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee or registrant (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(84) (80) "Rad" is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs/gram or 0.01 joule/kilogram (0.01 gray).

(85) (81) "Radiation" (ionizing radiation), except as otherwise defined in Section .1400 of this Chapter, means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions.

(86) (82) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

(87) (83) "Radiation dose" means dose.

(88) (84) "Radiation machine" means any device capable of producing radiation except devices which produce radiation only from radioactive material.

(89) (85) "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection rules.

(90) (86) "Radioactive material" means any material, solid, liquid, or gas, which emits radiation spontaneously.

(91) (87) "Radioactive waste disposal facility" means any low-level radioactive waste disposal facility, as defined in G.S. 104E-5(9c), established for the purpose of receiving low-level radioactive waste, as defined in Rule .1202 of this Chapter, generated by another licensee for the purpose of disposal.

(92) (88) "Radioactive waste processing facility" means any low-level radioactive waste facility, as defined in G.S. 104E-5(9b), established for the purpose of receiving waste, as defined in this Rule, generated by another licensee to be stored, compacted, incinerated or treated.

(93) (89) "Radioactivity" means the disintegration of unstable atomic nuclei by emission of radiation.

(94) (90) "Radiobioassay" means bioassay.

(95) "Recordable event" means the administration of the following:  
(a) a radiopharmaceutical or radiation from a licensed source without a written directive;  
(b) a radiopharmaceutical or radiation from a licensed source without recording each administered radiopharmaceutical dosage or radiation dose in the appropriate record on a daily basis;  
(c) a diagnostic radiopharmaceutical dosage when:  
(i) the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage; and  
(ii) the difference between the administered dosage and prescribed dose exceeds 15 microcuries;  
(d) a therapeutic radiopharmaceutical dosage when the administered dosage differs from the prescribed

dosage by more than 10 percent of the prescribed dosage;

(e) a teletherapy or accelerator radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or

(f) a brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose.

(96) (91) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus as published by the International Commission on Radiological Protection. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(97) (92) "Registrant" means any person who is registered with the agency as required by provisions of these Rules or the Act.

(98) (93) "Registration" means registration with the agency in accordance with these Rules.

(99) (94) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

(100) (95) "Rem" is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (1 rem = 0.01 sievert). As used in this Chapter, the quality factors for converting absorbed dose to dose equivalent are as follows:

**QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES**

<u>TYPE OF RADIATION</u>	<u>Quality Factor</u>	<u>Absorbed Dose Equal to a Unit Dose Equivalent*</u>
	<u>Q</u>	<u>Dose Equivalent*</u>
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

\*Absorbed dose in rad equal to one rem or the absorbed dose in gray equal to one sievert.

If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, one rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of the rules of this Chapter, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rads to dose equivalent in rems:

**MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS**

	<u>Neutron Energy (MeV)</u>	<u>Quality Factor<sup>a</sup></u> (Q)	<u>Fluence per Unit Dose Equivalent<sup>b</sup></u> (neutrons cm <sup>-2</sup> rem <sup>-1</sup> )
(thermal)	$2.5 \times 10^{-8}$	2	$980 \times 10^6$
	$1 \times 10^{-7}$	2	$980 \times 10^6$
	$1 \times 10^{-6}$	2	$810 \times 10^6$
	$1 \times 10^{-5}$	2	$810 \times 10^6$

$1 \times 10^{-4}$	2	$840 \times 10^6$
$1 \times 10^{-3}$	2	$980 \times 10^6$
$1 \times 10^{-2}$	2.5	$1010 \times 10^6$
$1 \times 10^{-1}$	7.5	$170 \times 10^6$
$5 \times 10^{-1}$	11	$39 \times 10^6$
1	11	$27 \times 10^6$
2.5	9	$29 \times 10^6$
5	8	$23 \times 10^6$
7	7	$24 \times 10^6$
10	6.5	$24 \times 10^6$
14	7.5	$17 \times 10^6$
20	8	$16 \times 10^6$
40	7	$14 \times 10^6$
60	5.5	$16 \times 10^6$
$1 \times 10^2$	4	$20 \times 10^6$
$2 \times 10^2$	3.5	$19 \times 10^6$
$3 \times 10^2$	3.5	$16 \times 10^6$
$4 \times 10^2$	3.5	$14 \times 10^6$

<sup>a</sup> Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

<sup>b</sup> Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

(101) ~~(96)~~ "Research and development" means:

- (a) theoretical analysis, exploration, or experimentation; or
- (b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(102) ~~(97)~~ "Respiratory protective device" means an apparatus, such as a respirator, used to reduce the individual's intake of airborne radioactive materials.

(103) ~~(98)~~ "Restricted area" means an area, access to which is controlled by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(104) ~~(99)~~ "Roentgen" (R) means the special unit of exposure. One roentgen equals  $2.58 \times 10^4$  coulombs/kilogram of air.

(105) ~~(100)~~ "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(106) ~~(101)~~ "Sealed source" means radioactive material that is permanently bonded, fixed or encapsulated so as to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

(107) ~~(102)~~ "Shallow-dose equivalent" ( $H_1$ ), which applies to the external exposure of the skin or an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter ( $7 \text{ mg/cm}^2$ ) averaged over an area of one square centimeter.

(108) ~~(103)~~ "SI unit" means a unit of measure from the International System of Units as established by the General Conference of Weights and Measures.

(109) ~~(104)~~ "Sievert" is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems).

(110) ~~(105)~~ "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(111) ~~(106)~~ "Source material" means:

(a) uranium or thorium or any combination of uranium and thorium in any physical or chemical form; or

(b) ores which contain, by weight, 0.05 percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(112) (107) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing radiation.

(113) (108) "Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission, Subpart F of 10 CFR Part 71, and the tests prescribed in Rule .0114 of this Section. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements, Subpart F of 10 CFR Part 71, in effect on June 30, 1984, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985, must meet requirements of this definition applicable at the time of its design or construction.

(114) (109) "Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the United States Nuclear Regulatory Commission, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954 (42 U.S.C. 2D11 et seq.), determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

(115) (110) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope uranium-235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of uranium-235, uranium enriched in uranium-235 and plutonium in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this Rule for the same kind of special nuclear material. The sum of these ratios for all the kinds of special nuclear material in combination shall not exceed unity. For example, the following quantities in combination would not exceed the limitations and are within the formula, as follows:

175 
$$\frac{\text{gram contained U-235}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} \text{ is } < \text{ or } = 1$$

(116) (111) "State" means the State of North Carolina.

(117) (112) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.

(118) (113) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of sources of radiation and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.

(119) (114) "These Rules" means Chapter 11 of this Title.

(120) (115) "Total effective dose equivalent" (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(121) (116) "Toxic or hazardous constituent of the waste" means the nonradioactive content of waste which, notwithstanding the radioactive content, would be classified as "hazardous waste" as defined in 15A NCAC 13A .0002(a).

(122) (117) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed  $A_1$  for special form radioactive material or  $A_2$  for normal form radioactive material, where  $A_1$  and  $A_2$  are given in Rule .0113 of this Section or may be determined by

procedures described in Rule .0113 of this Section. All quantities of radioactive material greater than a Type A quantity are Type B.

(123) (118) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

(124) (119) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant.

(125) (120) "Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at one meter from a radiation source or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (e.g., rads and grays) are appropriate, rather than units of dose equivalent (e.g., rems and sieverts).

(126) (121) "Waste" means low-level radioactive waste as defined in G.S. 104E-5(9a) and includes licensed naturally occurring and accelerator produced radioactive material which is not subject to regulation by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, except as defined differently in Rule .1202 of this Chapter.

(127) (122) "Waste, Class A" is defined in Rule .1650 of this Chapter.

(128) (123) "Waste, Class B" is defined in Rule .1650 of this Chapter.

(129) (124) "Waste, Class C" is defined in Rule .1650 of this Chapter.

(130) (125) "Week" means seven consecutive days starting on Sunday.

(131) (126) "Weighting factor",  $w_T$ , for an organ or tissue (T) is the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of  $w_T$  are:

**ORGAN DOSE WEIGHTING FACTORS**

<u>Organ or Tissue</u>	<u><math>w_T</math></u>
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 <sup>a</sup>
Whole body	1.00 <sup>b</sup>

<sup>a</sup> 0.30 results from 0.06 for each of 5 "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

<sup>b</sup> For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor,  $w_T = 1.0$ , has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

(132) (127) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(133) (128) "Worker" means an individual engaged in work under a license or registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(134) (129) "Working level" (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy.

(135) (130) "Working level month" (WLM) means an exposure to one working level for 170 hours.

(136) "Written directive" means an order in writing for a specific patient, dated and signed by an

authorized user prior to the administration of a radiopharmaceutical or radiation from a licensed source, except as specified in Sub-item (e) of this definition, containing the following information:

(a) for the diagnostic administration of a radiopharmaceutical:  
(i) radiopharmaceutical;  
(ii) proper diagnostic kit; and  
(iii) dosage;

(b) for the therapeutic administration of a radiopharmaceutical:  
(i) radiopharmaceutical;  
(ii) dosage; and  
(iii) route of administration;

(c) for teletherapy or accelerator radiation therapy:  
(i) total dose;  
(ii) dose per fraction;  
(iii) treatment site; and  
(iv) overall treatment period;

(d) for high-dose-rate remote afterloading brachytherapy:  
(i) radioisotope;  
(ii) treatment site; and  
(iii) total dose;

(e) for all other brachytherapy:  
(i) prior to implantation:  
(A) radioisotope;  
(B) number of sources to be implanted; and  
(C) source strengths in millicuries; and  
(ii) after implantation but prior to completion of the procedure:  
(A) radioisotope;  
(B) treatment site; and  
(C) either:  
(I) total source strength and exposure time; or  
(II) total dose;

(f) for gamma stereotactic radiosurgery:  
(i) target coordinates;  
(ii) collimator size;  
(iii) plug pattern; and  
(iv) total dose.

(137) ~~(134)~~ "Year" means the period of time beginning in January used to determine compliance with the provisions of Section .1600 of this Chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

*Statutory Authority G.S. 104E-7(a)(2).*

**.0117 INCORPORATION BY REFERENCE**

(a) For the purpose of the rules in this Chapter, the following rules, standards and other requirements are hereby incorporated by reference including any subsequent amendments and editions:

(1) Appendix A, Appendix B and Appendix C to 10 CFR Parts 20.1001 - 20.2401;  
(2) 10 CFR Part 31, 10 CFR Part 32, 10 CFR Part 40 and 10 CFR Part 50;  
(3) 10 CFR Part 61, 10 CFR Part 70, 10 CFR Part 71, 10 CFR Part 73, 10 CFR Part 110, 10 CFR Part 140 and 10 CFR Part 150;

(4) 21 CFR Part 1010, 21 CFR Part 1020 and 21 CFR Part 1040;  
(5) 39 CFR Part 14 and 39 CFR Part 15;  
(6) Postal Service Manual (Domestic Mail Manual) Section 124.3 [incorporated by reference in 39 CFR Section 111.11];  
(7) 40 CFR Part 261;  
(8) 49 CFR Parts 100-189;  
(9) "Agreement Between the United States Atomic Energy Commission and the State of North Carolina for Discontinuance of Certain Commission Regulatory Authority and Responsibility within the

State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended", signed July 21, 1964;

(10) "Standards and Specifications for Geodetic Control Networks (September 1984);

(11) "Geometric Geodetic Survey Accuracy Standards and Specifications for Geodetic Surveys Using GPS Relative Positioning Techniques";

(12) "Reference Man: Anatomical, Physiological and Metabolic Characteristics" (ICRP Publication No. 23) of the International Commission on Radiological Protection; and

(13) "10 CFR, Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 FR 7540"; and

(14) American National Standard N43.9-1991 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography".

(b) The rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule are available for inspection at the Department of Environment, Health, and Natural Resources, Division of Radiation Protection at the address listed in Rule .0111 of this Section. Except as noted in the Subparagraphs of this Paragraph, copies of the rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost as follows:

- (1) Three dollars (\$3.00) for the appendixes listed in Subparagraph (a)(1) of this Rule, available from the Division of Radiation Protection;
- (2) Twenty-five dollars (\$25.00) for the regulations listed in Subparagraph (a)(2) of this Rule in a volume containing 10 CFR Parts 0-50;
- (3) Eighteen dollars (\$18.00) for the regulations listed in Subparagraph (a)(3) of this Rule in a volume containing 10 CFR Parts 51-199;
- (4) Eighteen dollars (\$18.00) for the regulations listed in Subparagraph (a)(4) of this Rule in a volume containing 21 CFR Parts 800-1299;
- (5) Sixteen dollars (\$16.00) for the regulations listed in Subparagraph (a)(5) of this Rule in a volume containing 39 CFR;
- (6) Thirty-six dollars (\$36.00) for the manual listed in Subparagraph (a)(6) of this Rule;
- (7) Thirty-one dollars (\$31.00) for the regulations listed in Subparagraph (a)(7) of this Rule in a volume containing 40 CFR Parts 260-299;
- (8) for the regulations listed in Subparagraph (a)(8) of this Rule:
  - (A) Twenty-three dollars (\$23.00) for a volume containing 49 CFR Parts 100-177; and
  - (B) Seventeen dollars (\$17.00) for a volume containing 49 CFR Parts 178-199.
- (9) One dollar (\$1.00) for the agreement in Subparagraph (a)(9) of this Rule, available from the Division of Radiation Protection;
- (10) Two dollars and eighty-five cents (\$2.85) for the standards and specifications in Subparagraph (a)(10) of this Rule, available from the National Geodetic Information Center, N/CG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;
- (11) Two dollars and eighty-five cents (\$2.85) for the standards and specifications in Subparagraph (a)(11) of this Rule, available from the National Geodetic Information Center, NCG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;
- (12) One hundred and five dollars (\$105.00) for the ICRP Publication No. 23 in Subparagraph (a)(12) of this Rule, available from Pergamon Press, Inc., Maxwell House, Fairview Park, Elmsford, NY 10523; and
- (13) Two dollars (\$2.00) for the document in Subparagraph (a)(13) of this Rule, available from the Division of Radiation Protection; and
- (14) Thirty-eight dollars plus five dollars shipping and handling (\$43.00) for the American National Standard N43.9-1991 in Subparagraph (a)(14) of this Rule, available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, telephone number (212) 642-4900.

(c) Nothing in this incorporation by reference of

10 CFR Part 61 in Subparagraph (a)(3) of this Rule shall limit or affect the continued applicability of G.S. 104E-25(a) and (b).

*Statutory Authority G.S. 104E-7; 104E-15(a); 150B-21.6.*

## **SECTION .0300 - LICENSING OF RADIOACTIVE MATERIAL**

### **.0343 TRANSFER OF MATERIAL**

(a) No licensee shall transfer radioactive material except as authorized pursuant to this Section.

(b) Except as otherwise provided in his license and subject to the provisions of Paragraphs (c), (d) and (e) of this Rule any licensee may transfer radioactive material to:

- (1) the agency;
- (2) the U.S. Department of Energy;
- (3) any person exempt from the rules in this Section to the extent permitted under the exemption;
- (4) any person authorized to receive the radioactive material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the agency, the U.S. Nuclear Regulatory Commission, or an agreement state, or any person otherwise authorized to receive the radioactive material by the federal government or any agency thereof, the agency, or an agreement state; or
- (5) as otherwise authorized by the agency in writing.

(c) A licensee may transfer material to the agency only after receiving prior approval from the agency.

(d) Before transferring radioactive material to a specific licensee of the agency, the U.S. Nuclear Regulatory Commission, or an agreement state, or to a general licensee who is required to register with the agency, the U.S. Nuclear Regulatory Commission, or an agreement state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(e) The following methods for the verification required by Paragraph (d) of this Rule are acceptable:

- (1) The transferor may have in his possession, and read, a current copy of the transferee's transferee's specific li-

cense or registration certificate; The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(2) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; provided the oral certification is confirmed in writing within ten days after the date of the oral certification;

(3) The transferor may obtain other sources of information compiled by a reporting service from official records of the agency, the U.S. Nuclear Regulatory Commission, or the licensing agency of an agreement state as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(4) When none of the methods of verification described in this Rule are readily available or when a transferor desires to verify that information received by one of the methods is correct or updated, the transferor may obtain and record confirmation from the agency, the U.S. Nuclear Regulatory Commission, or the licensing agency of an agreement state that the transferee is licensed to receive the radioactive material.

(f) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of Rule .0346 of this Section.

*Statutory Authority G.S. 104E-7; 104E-10(b).*

### **.0350 RECORDS AND REPORTS OF MISADMINISTRATION**

(a) ~~When a misadministration involves any therapy procedure, the licensee shall notify the agency by telephone. The licensee shall also notify the referring physician of the affected patient and the patient or a responsible relative or guardian, unless the referring physician agrees to~~

inform the patient. However, if the referring physician believes, based on medical judgment, that telling the patient or the patient's responsible relative or guardian, would be harmful to one or the other, respectively, such notification is not required. These notifications must be made within 24 hours after the licensee discovers the misadministration. If the referring physician, patient, or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician. However, the licensee shall not delay medical care for the patient because of this notification requirement.

(b) Within 15 days after an initial therapy misadministration report to the agency, the licensee shall report, in writing, to the agency and to the referring physician, and furnish a copy of the report to the patient or the patient's responsible relative or guardian if either was previously notified by the licensee as required by Paragraph (a) of this Rule. The written report must include:

- (1) the licensee's name;
- (2) referring physician's name;
- (3) a brief description of the event;
- (4) the effect on the patient;
- (5) the action taken to prevent recurrence; and
- (6) confirmation that the licensee informed the patient or the patient's responsible relative or guardian, or documentation of the reasons why the patient or the patient's responsible relative or guardian was not informed.

The report must not include the patient's name or other information that could lead to identification of the patient.

(e) When a misadministration involves a diagnostic procedure, the radiation safety officer shall promptly investigate its cause, make a record for agency review, and retain the record as directed in Paragraph (d) of this Rule. The licensee shall also notify the referring physician and the agency in writing on the appropriate form(s) provided by the agency within 15 days if the misadministration involved the use of radioactive material not intended for medical use, administration of dosage five times different than the intended dosage, or administration of radioactive material such that the patient is likely to receive an organ dose greater than two rems or a whole body dose greater than 500 millirems. Licensees shall use dosimetry tables in package inserts, corrected only for

amount of radioactivity administered, to determine whether a report is required.

(d) Each licensee shall retain a record of each misadministration for ten years. The record must contain:

- (1) the names of all individuals involved in the event (including the physician, allied health personnel, the patient, and the patient's referring physician);
- (2) the patient's social security number or identification number, if one has been assigned;
- (3) a brief description of the event;
- (4) the effect on the patient; and
- (5) the action taken, if any, to prevent recurrence.

(a) As defined in this Rule, "patient" means the patient or the patient's responsible relative or guardian.

(b) For a misadministration as defined in Rule .0104 of this Chapter:

- (1) The licensee shall notify the agency by telephone no later than the next business day after discovery of the misadministration.
- (2) Within 15 days after the discovery of the misadministration, the licensee shall submit a written report to the agency. The written report shall include:
  - (A) the licensee's name;
  - (B) the name of the authorized user that issued the written directive;
  - (C) a brief description of the event recorded on the agency misadministration form;
  - (D) the licensee's evaluation of why the event occurred;
  - (E) any anticipated short and long term effects on the patient;
  - (F) the licensee's evaluation of improvements needed to prevent recurrence;
  - (G) documentation of the actions taken by the licensee to prevent recurrence; and
  - (H) whether or not the licensee notified the patient; and
    - (i) if the patient was not notified, the reason why not; or
    - (ii) if the patient was notified, what information was provided.
  - (3) The report required in Subparagraph (b)(2) of this Rule shall not include the patient's name or other information that could lead to the identification of the patient.

(4) The licensee shall notify the referring physician and the patient of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the patient or that, based on medical judgment, telling the patient would be harmful. The licensee is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the licensee shall notify the patient as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the patient, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(5) If the patient was notified, the licensee, shall also furnish, within 15 days after discovery of the misadministration a written report to the patient by sending either:

- (A) A copy of the report that was submitted to the agency; or
- (B) A brief description of both the event and the consequences as they may affect the patient, provided a statement is included that the report submitted to the agency can be obtained from the licensee.

(c) Each licensee shall retain a record of each misadministration for five years. The record shall contain:

- (1) the names of all individuals involved including the authorized user, allied health personnel, the patient, and the patient's referring physician;
- (2) the patient's social security number or identification number if one has been assigned; and
- (3) the information required in Parts (b)(2)(C)-(G) of this Rule.

(d) ~~(e)~~ Aside from the notification requirements, nothing in this Rule shall affect the rights or duties of licensees, and physicians in relation to each other, patients, or the patient's responsible relatives or guardians.

*Statutory Authority G.S. 104E-7(a)(2).*

#### **.0351 SPECIFIC LICENSES: MOBILE NUCLEAR MEDICINE SERVICES**

(a) Provided that mobile nuclear medicine services shall be limited to clients who do not have a specific radioactive material license for the same services, unless the client's specific license specifically authorizes the use of such mobile services, the agency will license a mobile nuclear medicine service for the following services:

- (1) uptake, dilution and excretion;
- (2) imaging and localization;
- (3) sealed sources for diagnosis; and
- (4) certain in vitro clinical or laboratory testing.

(b) The mobile nuclear medicine service licensee shall:

- (1) obtain a letter signed by the management of each client for which services are rendered that authorizes the licensee to use radioactive material at the client's address of use;
- (2) retain the letter for two years after the last provision of service;
- (3) not order radioactive material to be delivered directly from the manufacturer or distributor to the client's address of use;
- (4) transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals that are intended for reconstitution of radiopharmaceuticals kits;
- (5) bring into each address of use of all radioactive material to be used and before leaving, remove all unused radioactive material and all associated waste;
- (6) secure or keep under constant surveillance and immediate control all radioactive material when in transit or at an address of use;
- (7) check survey instruments, dose calibrators and all other transported equipment for proper function before medical use at each address of use;
- (8) carry a radiation detection survey meter in each vehicle that is being used to transport radioactive material and, before leaving a client address of use, survey all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed; and
- (9) retain a record of each survey required in Subparagraph (b)(8)(7) of this Rule

for two years, where such records shall include:

- (A) the date of the survey,
- (B) a plan of each area that was surveyed,
- (C) the measured dose rate at several points in each area of use expressed in millirem per hour,
- (D) the instrument used to make the survey; and
- (E) the initials of the individual who performed the survey.

Statutory Authority G.S. 104E-7(a)(2); 104E-10(b).

#### .0356 QUALITY MANAGEMENT PROGRAM

(a) Each applicant or licensee for medical use under this Section shall establish and maintain a written quality management program to provide high confidence that radioactive material or radiation from licensed sources will be administered as directed by the authorized user. The quality management program shall include written policies and procedures to meet the following specific objectives:

- (1) that, prior to administration, a written directive is prepared for any:
  - (A) diagnostic administration of a radiopharmaceutical;
  - (B) therapeutic administration of a radiopharmaceutical;
  - (C) brachytherapy radiation dose;
  - (D) teletherapy or accelerator radiation dose; or
  - (E) gamma stereotactic radiosurgery radiation dose;
- (2) that, prior to each administration, the patient's identity is verified by more than one method as the individual named in the written directive;
- (3) that final plans of treatment and related calculations for brachytherapy, teletherapy, accelerator treatment and gamma stereotactic radiosurgery are in accordance with written directives;
- (4) that each administration is in accordance with the written directive; and
- (5) that any unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

(b) Notwithstanding the requirements of Sub-paragraph (a)(1) of this Rule:

- (1) if, due to the patient's condition, a delay in the execution of an existing written directive in order to obtain a

written revision to the existing written directive would jeopardize the patient's health, an oral revision by an authorized user to an existing written directive shall be acceptable, provided that:

- (A) the oral revision is documented immediately in the patient's record; and
- (B) a revised written directive is signed by the authorized user within 48 hours of the oral revision;
- (2) a written revision to an existing written directive may be made for any diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy or accelerator radiation dose, or the next teletherapy or accelerator radiation fractional dose;
- (3) if, because of the emergent nature of the patient's condition, a delay in order to acquire a written directive by an authorized user would jeopardize the patient's health, an oral directive by an authorized user shall be acceptable, provided that:
  - (A) the information contained in the oral directive is documented immediately in the patient's record; and
  - (B) a written directive is prepared and signed by the authorized user within 24 hours of the oral directive.
- (c) The medical use licensee shall:
  - (1) develop procedures for and conduct a review of the quality management program at intervals not to exceed 12 months to verify compliance, since the last review, with all aspects of the quality management program including an evaluation of:
    - (A) a representative sample of patient administrations;
    - (B) all recordable events; and
    - (C) all misadministrations;
  - (2) evaluate each of these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the objectives of Paragraph (a) of this Rule; and retain records of each review in an auditable form, including the evaluations and findings of the review for three years.
  - (3)

(d) The medical use licensee shall evaluate and respond, within 30 days after discovery of a recordable event as defined in Rule .0104 of this Chapter, to each recordable event by:

- (1) assembling the relevant facts including the cause of the event;
- (2) identifying any corrective action required to prevent recurrence; and
- (3) retaining a record, in an auditable form, for three years, of the information required in Subparagraphs (1) and (2) of Paragraph (d).

(e) The medical use licensee shall retain:

- (1) each written directive;
- (2) a record of each administered radiation dose or radiopharmaceutical dosage; and
- (3) retaining a record, in an auditable form, for three years, of the information required in Subparagraphs (1) and (2) of Paragraph (e).

(f) The medical use licensee is authorized to make modifications to the quality management program, without prior approval by the agency, that do not degrade the program's ability to maintain exposures as low as reasonably achievable. Changes to the quality management program shall be submitted to the agency for review within 30 days of the change.

(g) Each applicant for a new medical use license shall submit to the agency a quality management program as part of the application for a license and implement the program upon issuance of the license.

(h) Each existing medical use licensee shall submit to the agency by May 1, 1995 a written certification that the quality management program has been implemented along with a copy of the program.

Statutory Authority G.S. 104E-7; 104E-10(b).

#### .0357 REPORTING REQUIREMENTS

(a) Immediate report. Each licensee shall notify the agency as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to sources of radiation that could exceed regulatory limits or releases of licensed radioactive material that could exceed regulatory limits. These events include but are not limited to fires, explosions and toxic gas releases.

(b) Twenty-four hour report. Each licensee shall notify the agency within 24 hours after the discovery of any of the following events involving

licensed radioactive material:

- (1) an unplanned contamination event that:
  - (A) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;
  - (B) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B to 10 CFR §§ 20.1001-20.2401 for the material; and
  - (C) causes the licensee to restrict access to the area for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination;
- (2) an event in which equipment is disabled or fails to function as designed when:
  - (A) the equipment is required by rule or license condition to:
    - (i) prevent releases exceeding regulatory limits;
    - (ii) prevent exposures to sources of radiation exceeding regulatory limits; or
    - (iii) to mitigate the consequences of an accident;
  - (B) the equipment is required to be available and operable at the time that it is disabled or fails to function; and
  - (C) no redundant equipment is available and operable to perform the required safety function;
- (3) an event that requires unplanned medical treatment at a medical facility of an individual with removable radioactive contamination on the individual's clothing or body; or
- (4) an unplanned fire or explosion damaging any licensed material or any device, container or equipment containing licensed radioactive material when:
  - (A) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B to 10 CFR §§ 20.1001-20.2401 for the material; and
  - (B) the damage affects the integrity of the licensed radioactive material or its container.

(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this Rule shall be made as follows:

(1) Licensees shall make reports required by Paragraphs (a) and (b) of this Rule by telephone as specified in Rule .0111(b) of this Chapter. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

- (A) the caller's name and call back telephone number;
- (B) a description of the event, including date and time;
- (C) the exact location of the event;
- (D) the isotopes, quantities, and chemical and physical form of the licensed radioactive material involved; and
- (E) any personnel radiation exposure data available.

(2) Each licensee who makes a report required by Paragraph (a) or (b) of this Rule shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be submitted to the agency as specified in Rule .0111(a) of this Chapter. The reports shall include the following:

- (A) a description of the event, including the probable cause and the manufacturer and model number, if applicable, of any equipment that failed or malfunctioned;
- (B) the exact location of the event;
- (C) the isotopes, quantities and chemical and physical form of the licensed material involved;
- (D) the date and time of the event;
- (E) the corrective actions taken or planned and the result of any evaluations or assessments; and
- (F) the extent of exposure of individuals to sources of radiation without identification of individuals by name.

Statutory Authority G.S. 104E-7(a)(2); 104E-10(b).

## SECTION .0500 - SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHY OPERATIONS

### .0502 DEFINITIONS

(a) As used in this Section, the following definitions shall apply:

- (1) "Associated equipment" means equipment used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides or comes in contact with the sealed source or radiation machines.
- (2) "Cabinet radiography using radiation machines" means industrial radiography using radiation machines, which is conducted in an enclosed, interlocked cabinet, such that the radiation machine will not operate unless all openings are securely closed, and which cabinet is so shielded that every location on the exterior meets conditions for an unrestricted area as specified in Rule .1611 of this Chapter.
- (3) "Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam.
- (4) "Control device", commonly called a crank-out, means the control cable, the protective sheath and control drive mechanism used to move the sealed source from the shielded position in the radiographic device or camera to an unshielded position outside the device for the purpose of making a radiographic exposure.
- (5) "Exposure head", commonly called a source stop, means a device that locates the gamma radiography sealed source in the selected working position.
- (6) "Field examination" means a demonstration of practical application of principles learned in the classroom that shall include use of all appropriate equipment and procedures.
- (7) "Industrial radiography" means the examination of materials by nondestructive methods utilizing sources of radiation.
- (8) "Periodic training" means a periodic review conducted or provided by the licensee or registrant for its employees on radiation safety aspects of radiography. The review shall include the results of internal inspections, new procedures or equipment, accidents or errors that have been observed, and opportunities for employees to ask safety questions.
- (9) "Permanent radiographic installa-

tion" means a shielded installation or structure designed or intended for radiography and an enclosed shielded room, cell, or vault in which radiography is regularly performed.

(10) "Projection sheath", commonly called a guide tube or "J" tube, means a flexible or rigid tube for guiding the source assembly and the attached control cable from the exposure device to the exposure head. When the source assembly is fully extended to the exposure head, the sealed source is in what is commonly called the working position.

(11) "Radiation Safety Officer" means an individual named by the licensee or registrant who has knowledge of, responsibility for, and authority to ensure compliance with appropriate radiation protection rules, standards, and practices on behalf of the licensee or registrant and who meets the requirements of Rule .0510(g) of this Section.

(12) (a) "Radiographer" means any individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these Rules and all license or registration conditions.

(b) "Radiographer's assistant" means any individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(c) "Radiographic exposure device", commonly called a camera or projector, means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

(15) (d) "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

(16) "Shielded position" means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement. In this position the radiation exposure will be at minimum. This position incorporates maximum shielding for the sealed source.

(e) "Shielded room radiography using radiation machines" means industrial radiography using radiation machines, which is conducted in an enclosed room, the interior of which is not occupied during radiographic operations, which is so shielded that every location on the exterior meets conditions for an unrestricted area as specified in Rule .1611 of this Chapter, and the only access to which is through openings which are interlocked so that the radiation machine will not operate unless all openings are securely closed.

(17) "Source assembly" means an assembly that consists of the sealed source and a connector. It also includes the stop ball if one is used to secure the sealed source in the shielded position. The connector attaches to the control cable.

(18) (f) "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

(g) "Storage area" means any location, facility or vehicle which is used to store, transport or secure a radiographic exposure device, a storage container or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with or unauthorized removal of the device, storage container or sealed source.

(h) "Storage container" means a device in which sealed sources are transported or stored.

(i) "Storage container" means a device in which sealed sources are transported or stored.

(21) "Temporary jobsite" means a place, other than a permanent radiographic installation, where sealed sources or radiation machines are present for the purpose of performing radiography.

(b) Other definitions applicable to this Section may be found in Rule .0104 of this Chapter.

Statutory Authority G.S. 104E-7.

.0503 EQUIPMENT RADIATION LEVEL LIMITS

(a) Radiographic exposure devices measuring

less than four inches (10 centimeters) from the sealed source storage position to any exterior surface of the device shall have no radiation level in excess of 50 milliroentgens (0.5 millisieverts) per hour at six inches (15 centimeters) from any exterior surface of the device. Radiographic exposure devices, source changers and storage containers measuring a minimum of four inches (10 centimeters) from the sealed source storage position to any exterior surface of the device, and all storage containers for sealed sources or outer containers for radiographic exposure devices, shall have no radiation level in excess of 200 milliroentgens (2 millisieverts) per hour at any exterior surface, and ten milliroentgens (0.1 millisieverts) per hour at one meter from any exterior surface. The radiation levels specified are with the sealed source in the shielded position.

(b) After January 10, 1996 all radiographic exposure devices and associated equipment other than storage containers shall meet the requirements of Rule .0521 of this Section.

*Statutory Authority G.S. 104E-7.*

**.0504 RADIOGRAPHIC EXPOSURE DEVICES AND STORAGE CONTAINERS**

(a) Each radiographic exposure device shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device or its container shall be kept locked when not under the direct surveillance of a radiographer or a radiographer's assistant or as otherwise may be authorized in Rule .0515 of this Section. If the exposure device or container is secured with a keyed lock, the key shall be removed at all times when the device or container is not being used. In addition, during radiographic operations, the sealed source assembly shall be manually secured in the shielded position each time the sealed source is returned to that position in those devices manufactured prior to the effective date of this Rule.

(b) Each sealed source storage container and source changer shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers shall be kept locked when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant.

(c) Prior to moving a radiographic exposure

device, source changer or storage container from one temporary jobsite to another, the licensee shall:

- (1) perform a survey to ensure that the sealed source is in the shielded position;
- (2) disassemble the radiographic exposure device, source changer or storage container from associated equipment;
- (3) apply safety plugs or covers;
- (4) lock the radiographic exposure device, source changer or storage container; and
- (5) physically secure the radiographic exposure device, source changer or storage container to prevent accidental loss, tampering or removal of sealed sources.

*Statutory Authority G.S. 104E-7.*

**.0505 STORAGE, LABELS AND TRANSPORTATION PRECAUTIONS**

(a) Security precautions during storage or transportation:

- (1) Locked radiographic exposure devices and storage containers shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store sealed sources in a manner which will minimize danger from explosion or fire.
- (2) The licensee shall lock and physically secure the transport package containing sealed sources in the transporting vehicle to prevent accidental loss, tampering or unauthorized removal of the sealed sources from the vehicle.

(b) Labels:

- (1) The licensee shall not use a source changer or storage container to store sealed sources unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label. The label shall contain the radiation symbol specified in Rule .1623 of this Chapter and the wording:

**CAUTION (OR DANGER)**

**RADIOACTIVE MATERIAL—DO NOT HANDLE**  
**NOTIFY CIVIL AUTHORITIES**  
**(OR NAME OF COMPANY)**

- (2) The licensee shall not transport sealed sources unless the material is packaged.

labeled, marked, and accompanied with the appropriate shipping papers in accordance with regulations set out in 10 CFR Part 71, including documentation of the Quality Assurance program requirements outlined in 10 CFR 71.105.

Statutory Authority G.S. 104E-7.

**.0506 SURVEY INSTRUMENTS**

(a) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at each temporary jobsite and at any location where sealed sources or radiation machines are used or stored to make physical radiation surveys as required by this Rule and Rules .1613 and .1627 of this Chapter.

(b) Each radiation survey instrument required by Paragraph (a) shall be calibrated:

- (1) at intervals not to exceed three months and after each instrument servicing except for battery change; and a record maintained of the latest date of calibration.
- (2) at the following points for each instrument, as applicable:
  - (A) linear scale instruments shall be calibrated at two points located approximately 1/3 and 2/3 of full-scale on each scale;
  - (B) logarithmic scale instruments shall be calibrated at the midrange of each decade and at two points in the same decade for at least one decade; and
  - (C) digital instruments shall be calibrated in accordance with procedures approved by the agency provided that the calibration includes the following points:
    - (i) 2 mR/hr or 0.02 mSv/hr;
    - (ii) 5 mR/hr or 0.05 mSv/hr;
    - (iii) 50 mR/hr or 0.5 mSv/hr;
    - (iv) 500 mR/hr or 5 mSv/hr; and
    - (v) 1 R/hr or 0.01 Sv/hr;
- (3) so that an accuracy within plus or minus 20 percent of the calibration standard can be demonstrated on each scale.

(c) Instrumentation required by this Rule shall have a range such that two milliroentgens (0.02 millisieverts) per hour through one roentgen (0.01 sievert) per hour can be measured.

(d) Survey instruments shall be checked for operability prior to use. This may be accom-

plished by evaluating the instrument response to the previously measured fields at the projection sheath port or the control cable sheath port on a radiographic exposure device.

(e) The licensee or registrant shall maintain records of the results of the instrument calibrations in accordance with Rule .0523 of this Section.

Statutory Authority G.S. 104E-7; 104E-12(a)(1).

**.0507 LEAK TESTING AND REPLACEMENT OF SEALED SOURCES**

(a) The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing, repair, tagging, opening or any other modification of any sealed source shall be performed only by persons specifically authorized by the agency to do so pursuant to the rules in this Section.

(b) Each sealed source shall be tested for leakage at intervals not to exceed six months. In the absence of a certificate from a transferor that a test has been made within the six months prior to the transfer, the sealed source shall not be put into use until tested.

(c) The leak test shall be capable of detecting the presence of 0.005 microcurie of removable contamination on the sealed source. An acceptable leak test for sealed sources in the possession of a radiography licensee would be to test at The wipe of a sealed source shall be performed using a leak test kit or method approved by the agency. The wipe sample shall be taken from the nearest accessible point to the sealed source storage position, or other appropriate measuring point, by a procedure to be approved pursuant to Rule .0323(5) of this Chapter. Records of leak test results shall be kept in units of microcuries and maintained for inspection by the agency for six months after the next required leak test is performed or until the sealed source is disposed of or transferred. The wipe sample shall be analyzed for radioactive contamination. The analysis shall be capable of detecting 0.005uCi (185 Bq) of radioactive material on the test sample and shall be performed by persons licensed or registered by the agency to perform such a service.

(d) Any test conducted pursuant to Paragraphs (b) and (c) of this Rule which reveals the presence of 0.005 microcurie (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall cause it to be decon-

taminated and repaired or to be disposed of, in accordance with these Rules. A report describing the equipment involved, the test results, and the corrective action taken shall be submitted in writing to the agency at the address in Rule .0111 of this Chapter within five days after the test.

(e) ~~A sealed source which is not fastened to or contained in a radiographic exposure device shall have permanently attached to it a durable tag at least one inch square bearing the prescribed radiation caution symbol in conventional colors, magenta or purple on a yellow background, and at least the instructions "Danger Radioactive Material. Do Not Handle. Notify Civil Authorities If Found."~~ The licensee shall maintain records of the leak test results in accordance with Rule .0523 of this Section.

Statutory Authority G.S. 104E-7.

#### .0508 QUARTERLY INVENTORY

(a) Each licensee shall conduct a quarterly physical inventory to account for all sealed sources received and possessed under the license. The records of the inventories shall be maintained for two years from the date of the inventory for inspection by the agency, and shall include the quantities and kinds of radioactive material, location of sealed sources, and the date of the inventory.

(b) The licensee shall maintain records of the quarterly inventory in accordance with Rule .0523 of this Section.

Statutory Authority G.S. 104E-7; 104E-12(a)(1).

#### .0509 UTILIZATION LOGS

Each licensee or registrant shall maintain current utilization logs, which shall be kept available for two years from the date of the recorded event, for inspection by the agency at the address specified in the license, showing for each sealed source and radiation machine the following: information required by Rule .0523 of this Section.

- (1) ~~a description or make and model number of the radiographic exposure device or storage container in which the sealed source is located;~~
- (2) ~~the identity of the radiographer to whom assigned; and~~
- (3) ~~the plant or site where used and dates of use.~~

Statutory Authority G.S. 104E-7; 104E-12(a)(1).

#### .0510 LIMITATIONS

(a) The licensee or registrant shall not permit any person to act as a radiographer until the person:

- (1) has been instructed in the subjects outlined in Rule .0518 .0519 of this Section and has demonstrated understanding thereof;
- (2) has received copies of and instruction in the rules contained in this Section and in the applicable rules of Section Sections .0200, .0300, and .0900 and .1600 of this Chapter, and the licensee's or registrant's operating and emergency procedures, and has demonstrated understanding thereof;
- (3) has demonstrated competence to use the radiographic exposure devices, sealed sources, related handling tools, radiation machines and survey instruments which will be employed in his assignment; and
- (4) has demonstrated understanding of the instructions in Paragraph (a) of this Rule by successful completion of a written test and a field examination on the subjects covered.

(b) The licensee or registrant shall not permit any person to act as a radiographer's assistant until the person:

- (1) has received copies of and instructions in the licensee's or registrant's operating and emergency procedures, and has demonstrated understanding thereof;
- (2) has demonstrated competence to use under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, radiation machines and radiation survey instruments which will be employed in his assignment; and
- (3) has demonstrated understanding of the instructions in Paragraph (b) of this Rule by successfully completing a written or oral test and a field examination on the subjects covered.

(c) Records of the training including copies of written tests and dates of oral tests and field examinations shall be maintained for three years in accordance with Rule .0523 of this Section.

(d) Each licensee or registrant shall conduct an internal audit program to ensure that the agency's radioactive material license, registration conditions and the licensee's or registrant's operating and

emergency procedures are followed by each radiographer and radiographer's assistant. These internal audits shall be performed and records maintained by the licensee or registrant as specified in Sub-items (3)(a) and (b) of Rule .0323 of this Chapter.

(e) The licensee or registrant shall provide periodic training for radiographers and radiographer's assistants at least once during every twelve months.

(f) Whenever radiography is performed outside of a permanent radiographic installation, the radiographer shall be accompanied by another qualified radiographer or an individual with, at least, the qualifications of a radiographer's assistant. This person's responsibilities shall include but not be limited to observing the operations and being capable and prepared to provide immediate assistance to prevent unauthorized entry. Unless otherwise authorized by the agency, radiography shall not be performed if only one qualified individual is present.

(g) The radiation safety officer shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's or registrant's program.

(1) The radiation safety officer's qualifications shall include:

(A) completion of the training and testing requirements of Paragraph (a) of this Rule; and

(B) Two years documented experience in industrial radiographic operations, with at least 40 hours of formal classroom training with respect to the oversight of radiation protection programs or an equivalent combination of education and experience.

(2) The specific duties of the radiation safety officer shall include, but are not limited to, the following:

(A) to establish and oversee operating, emergency and ALARA procedures, and to review them regularly to assure that the procedures are current and conform with these Rules;

(B) to oversee and approve all phases of the training of radiographic personnel so that appropriate and effective radiation protection practices are taught;

(C) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this

Rule, including any corrective measures when levels of radiation exceed established limits;

(D) to ensure that personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by Rule .1646 of this Chapter;

(E) to assure that operations are conducted safely and to assume control and have the authority to institute corrective actions including stopping of operations when necessary in emergency situations or unsafe conditions.

(h) Notwithstanding the provisions of Paragraph (g) of this Rule, any person authorized by license or registration condition to serve as the radiation safety officer on the effective date of this Rule, shall not be required to meet the training requirements in Subparagraph (g)(1) of this Rule until October 1, 1996.

*Statutory Authority G.S. 104E-7; 10 C.F.R. Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 F.R. 7540.*

#### .0511 INSPECTION AND MAINTENANCE

(a) The licensee or registrant shall conduct a program for inspection and maintenance of radiographic exposure devices, storage containers, and source changers, radiation machines and associated equipment at intervals not to exceed three months or prior to the first use thereafter to assure proper functioning of components important to safety. Records of these inspections and maintenance shall be kept by the licensee or registrant for two years made in accordance with Rule .0523 of this Section. If defects are found, the affected radiographic exposure devices, storage containers, source changers, radiation machines and associated equipment shall be removed from service until repaired and a record made in accordance with Rule .0523 of this Section.

(b) Prior to use each day, the licensee or registrant shall visually check for obvious defects in radiographic exposure devices, storage containers, and source changers, radiation machines and associated equipment prior to use each day the equipment is used. The purpose of the visual check is to assure that the radiographic exposure devices, storage containers, source changers, radiation machines and associated equipment are in good working condition and that the required

labeling is present. If defects are found, the affected radiographic exposure devices, storage containers, source changers, radiation machines and associated equipment shall be removed from service until repaired and a record shall be made in accordance with Rule .0523 of this Section.

(c) Each exposure device using depleted uranium (DU) shielding and an "S" tube configuration shall be tested for DU contamination at intervals not to exceed 12 months. This test shall be performed by the licensee using approved test kits or by the licensee returning the exposure device to the manufacturer for such testing. If the test reveals the presence of DU contamination, the exposure device shall be removed from use and arrangements for proper disposal shall be made.

Statutory Authority G.S. 104E-7.

#### .0512 PERSONNEL MONITORING

(a) The licensee or registrant shall not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each such individual wears a direct reading pocket dosimeter, an alarm ratemeter, and either a film badge or a thermoluminescent dosimeter (TLD) except that for permanent radiography facilities where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required. Pocket dosimeters shall have a range from zero to at least 200 milliroentgens (2 millisieverts) and shall be recharged daily or at the start of each shift. Each film badge and thermoluminescent dosimeter TLD shall be assigned to and worn by only one individual. Film badges and TLDs shall be exchanged at least monthly. After exchange, each film badge or TLD shall be promptly processed.

(b) Pocket dosimeters shall be read and exposures recorded daily. An individual's film badge or thermoluminescent dosimeter shall be immediately processed if his pocket dosimeter is discharged beyond its range. Reports received from the badge or dosimeter processor and records of the pocket dosimeter readings shall be maintained for inspection by the agency until it authorizes their disposal at the beginning and end of each shift.

(c) Pocket dosimeters shall be checked at periods not to exceed one year 12 months for correct response to radiation. Acceptable dosimeters shall read within plus or minus 30 percent of the true radiation exposure.

(d) If an individual's pocket dosimeter is found

to be off-scale, and the possibility of radiation exposure cannot be ruled out as the cause, their film badge or TLD shall be immediately sent for processing. In addition, the individual shall not work with sealed sources until a determination of his radiation exposure has been made by the radiation safety officer or his designee.

(e) If a film badge or TLD is lost or damaged, the worker shall cease work immediately until a replacement film badge or TLD is provided and exposure is calculated for the time period from issuance to loss or damage of the film badge or TLD.

(f) Each alarm ratemeter shall:

- (1) be checked to ensure that the alarm functions properly prior to use at the start of each shift;
- (2) be set to give an alarm signal at a preset rate not to exceed 500 mR/hr or 5 mSv/hr;
- (3) require special means to change the preset alarm function;
- (4) alarm within plus or minus 20 percent of the true radiation rate;
- (5) be calibrated at periods not to exceed one year for correct response to radiation.

(g) Records of daily dosimeter readings, determination of exposure as a result of a lost or damaged film badge or TLD, 12 month response checks on dosimeters and results from the film badge or TLD processor shall be maintained in accordance with Rule .0523 of this Section.

(h) Notwithstanding the requirements of Paragraph (a) of this Rule, the agency may approve a higher pocket dosimeter range upon written request by the licensee or registrant if the agency determines that the requested range will afford the protection required by the rules in this Chapter.

Statutory Authority G.S. 104E-7; 104E-12(a)(2).

#### .0513 OPERATING AND EMERGENCY PROCEDURES

The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

- (1) the handling and use of sources of radiation to be employed such that no individual is likely to be exposed to radiation doses in excess of the limits established in Rule .1604 of this Chapter;
- (2) methods and occasions for conducting radiation surveys;
- (3) methods for controlling access to radio-

- (4) graphic areas;
- (5) methods and occasions for locking and securing sources of radiation;
- (6) personnel monitoring and the use of personnel monitoring equipment;
- (6) transportation to field locations, including packing of sealed sources of radiation in the vehicles, posting of vehicles, and control of sealed sources of radiation during transportation;
- (7) minimizing exposure of individuals in the event of an accident;
- (8) the procedure for notifying proper personnel in the event of an accident;
- (9) maintenance of records;
- (10) the inspection and maintenance of radiographic exposure devices, radiation machines and storage containers; and
- (11) steps must that shall be taken immediately by radiography personnel in the event a pocket dosimeter is found to be off scale; and
- (12) sealed source recovery procedure if the licensee will perform sealed source recovery.

Statutory Authority G.S. 104E-7.

#### .0514 SECURITY

During each radiographic operation the radiographer or radiographer's assistant shall maintain a continuous direct surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in Rule .0104 of this Chapter, except where the high radiation area:

- (1) is equipped with a control device or an alarm system as described in Rule .1615 of this Chapter, or
- (2) is locked to protect against unauthorized or accidental entry.

Statutory Authority G.S. 104E-7.

#### .0515 RADIATION SURVEYS AND SURVEY RECORDS

(a) No radiographic operation shall be conducted unless calibrated and operable radiation survey instrumentation as described in Rule .0506 of this Section is available and used at each site where radiography is performed, including sealed source exchange and at the storage area whenever a radiographic exposure device, a storage container or sealed source is being placed in storage.

(b) A survey with a radiation detection instrument shall be made after each radiographic expo-

sure to determine that the sealed source has returned to its shielded position in the radiographic exposure device or the radiation machine is off. The entire circumference of the device shall be surveyed. If the radiographic exposure device has a source guide tube, the survey shall include the guide tube. For sealed sources, the licensee shall conduct a survey as the radiographer or radiographer's assistant approaches the guide tube prior to exchanging films, repositioning the collimator or dismantling the radiographic exposure device and associated equipment.

(c) When the use of a radiographic exposure device or storage container is to be terminated at the end of a work period, a survey with a radiation detection instrument shall be made of the locked radiography device or storage container to determine that the sealed source is in its shielded position. A record of the surveys required by this Rule shall be kept for two years.

(d) A survey of the radiographic exposure device and source changer shall be performed with a radiation detection instrument any time the sealed source is exchanged and whenever a radiographic exposure device is placed in a storage area.

(e) An area survey of the perimeter of the restricted area with a radiation detection instrument shall be made with the sealed source exposed or the radiation machine on before or during the initial radiographic exposure on each shift and when the sealed source or the radiation machine target configuration for an exposure is substantially different from that of the preceding exposure. These surveys are not required for radiography performed in a permanent radiographic installation.

(f) Records of surveys required by this Rule shall be maintained in accordance with the requirements of Rule .0523 of this Section.

Statutory Authority G.S. 104E-7; 104E-12(a)(1).

#### .0517 SUPERVISION OF RADIOGRAPHERS' ASSISTANTS

(a) Whenever a radiographer's assistant uses radiographic exposure devices or radiation machines, uses sealed sources or related source handling tools, or conducts radiation surveys required by Rule .0515(b) and (c) of this Section to determine that the exposure has been terminated and, if applicable, the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer.

(b) The personal supervision shall include:

- (1) the radiographer's personal presence at

(2) the site where the sealed sources or radiation machines are being used;

(3) the ability of the radiographer to give immediate assistance, if required; and

(3) the radiographer's watching the assistant's performance of the operations referred to in this Section.

Statutory Authority G.S. 104E-7.

#### .0518 RADIATION MACHINES

The following are special requirements for radiography employing radiation machines:

(1) Cabinet radiography using radiation machines, as defined in Rule .0502 of this Section shall be exempt from requirements of this Section except that no registrant shall permit any individual to operate a cabinet radiography unit until:

(a) the registrant has provided the individual a copy of, and instruction in, the operating procedures for the unit; and

(b) the individual has demonstrated, to the registrant, understanding of the operating procedures for the unit and competence in its use.

(2) Shielded Room Radiography using radiation machines, as defined in Rule .0502 of this Section, shall be exempt from the requirements of this Section, except that:

(a) No registrant shall permit any individual to operate a radiation machine for shielded room radiography until:

(i) the registrant has provided the individual a copy of, and instruction in, the operating procedures for the unit; and

(ii) the individual has demonstrated, to the registrant, understanding of the operating procedures for the unit and competence in its use.

(b) Each registrant shall supply appropriate personnel monitoring equipment to, and shall require the use of such equipment by, every individual who operates, who makes "set ups" or who performs maintenance on a radiation machine for shielded room radiography.

(c) A physical radiation survey shall be conducted to determine that the radiation machine is "off" prior to each entry into the shielded room. Such surveys shall be made with a radiation measuring instrument which is capable

of measuring radiation of the energies and at the exposure rates to be encountered, which is in good working order, and which has been properly calibrated within the preceding three months or following the last instrument servicing, whichever is later.

(2) Other radiography using radiation machines are exempt from Rules .0503, .0504, .0505, .0507, and .0508 and .0521 of this Section; however:

(a) A physical radiation survey shall be conducted to determine that the radiation machine is "off" prior to each entry into the radiographic exposure area. Such surveys shall be made with a radiation measuring instrument capable of measuring radiation of the energies and at the exposure rates to be encountered, which is in good working order, and which has been properly calibrated within the preceding three months or following the last instrument servicing, whichever is later. Survey results and records of boundary locations shall be maintained and kept available for inspection; and

(b) Mobile or portable radiation machines shall be physically secured to prevent removal by unauthorized personnel.

Statutory Authority G.S. 104E-7; 104E-12(a)(1).

#### .0519 SUBJECTS TO BE COVERED DURING INSTRUCTION OF RADIOGRAPHERS

The following subjects shall be covered in the instructions of radiographers:

(1) fundamentals of radiation safety

(a) characteristics of gamma and x-radiation

(b) units of radiation dose (mrem, sievert) and quantity of radioactivity (curie, becquerel)

(c) hazards of excessive exposure of radiation

(d) levels of radiation from sources of radiation

(e) methods of controlling radiation dose

(i) working time

(ii) working distances

(iii) shielding

(2) radiation detection instrumentation to be used

(a) use of radiation survey instruments

- (i) operation
- (ii) calibration
- (iii) limitations

(b) survey techniques

(c) use of personnel monitoring equipment

- (i) film badges
- (ii) pocket dosimeters
- (iii) pocket chambers

(3) radiographic equipment to be used

- (a) remote handling equipment
- (b) radiographic exposure devices, radiation machines and sealed sources
- (c) storage containers
- (d) operation and control of x-ray radiography equipment
- (e) storage, control and disposal of sealed sources

(4) the requirements of pertinent federal and state regulations

(5) the licensee's or registrant's written operating and emergency procedures

(6) inspection and maintenance performed by radiographers

(7) case histories of radiography accidents.

(8) the conditions of the license or registration issued by the agency.

Statutory Authority G.S. 104E-7.

#### **.0520 PERMANENT RADIOGRAPHIC INSTALLATIONS**

(a) Permanent radiographic installations having high radiation area entrance controls of the types described in Subparagraphs (a)(1), (2) and (3) of Rule .1615 of this Chapter shall also meet the following special requirements:

- (1) Each entrance that is used for personnel access to the high radiation area in a permanent radiographic installation to which this Section applies shall have both visible and audible warning signals to warn of the presence of radiation.
- (2) The visible signal shall be actuated by radiation whenever the sealed source is exposed.
- (3) The audible signal shall be actuated when an attempt is made to enter the installation while the sealed source is exposed.

(b) The alarm system shall be tested for proper operation at intervals not to exceed three months and at the beginning of each day of equipment use, ~~or prior to the first use thereafter of the source in the installation. Records of the tests shall be kept for two years by the licensee. The daily test shall~~

include a check of the visible and audible signals by exposing the sealed source or operating the radiation machine prior to use of the room. If a control device or alarm is operating improperly, it shall immediately be labeled as defective and repaired before industrial radiographic operations are resumed.

(c) Records of test of alarm functions shall be maintained in accordance with Rule .0523 of this Section.

Statutory Authority G.S. 104E-7; 104E-12(a)(1).

#### **.0521 PERFORMANCE REQUIREMENTS FOR RADIOGRAPHY EQUIPMENT**

Equipment used in radiographic operations shall meet the following minimum criteria:

- (1) Each radiographic exposure device and all associated equipment shall meet the requirements specified in American National Standard N43.9-1991 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography".
- (2) In addition to the requirements specified in Item (1) of this Rule, the following requirements apply to radiographic exposure devices and associated equipment:
  - (a) Each radiographic exposure device shall have attached to it by the user a durable, legible, clearly visible label bearing the following:
    - (i) Chemical symbol and mass number of the radionuclide in the device;
    - (ii) Activity and the date on which this activity was last measured;
    - (iii) Model number and serial number of the sealed source;
    - (iv) Manufacturer of the sealed source; and
    - (v) Licensee's name, address, and telephone number.
  - (b) Radiographic exposure devices intended for use as Type B transport containers shall meet the applicable requirements of 10 CFR Part 71.
  - (c) Modification of any exposure devices and associated equipment is prohibited, unless the design of any replacement component, including sealed source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.
- (3) In addition to the requirements specified in Items (1) and (2) of this Rule, the

following requirements apply to radiographic exposure devices and associated equipment that allow the sealed source to be moved out of the device for routine operation.

(a) The coupling between the source assembly and the control cable shall be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling shall be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(b) The device shall automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system shall be designed to only allow release of the sealed source by means of a deliberate operation on the exposure device.

(c) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device shall be equipped with safety plugs or covers which shall be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

(d) Each sealed source or source assembly shall have attached to it or engraved in it, a durable, legible, visible label with the words: "DANGER--RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment.

(e) The guide tube shall have passed the crushing tests for the control tube as specified in ANSI N432 and a kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(f) Guide tubes shall be used when moving the sealed source out of the device.

(g) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube shall be attached to the outermost end of the guide tube during radiographic operations.

(h) The guide tube exposure head connection shall be able to withstand the tensile test for control units specified in ANSI N432.

(i) Source changers shall provide a system for assuring that the sealed source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

(4) All newly manufactured radiographic exposure devices and associated equipment acquired by licensees after the effective date of this Rule shall comply with the requirements of this Rule.

(5) All radiographic exposure devices, source assemblies and associated equipment in use after January 10, 1996 shall comply with the requirements of this Rule.

(6) All associated equipment acquired after January 10, 1996 shall be labeled to identify that the components have met the requirements of this Rule.

Statutory Authority G.S. 104E-7.

#### .0522 REPORTING REQUIREMENTS

(a) In addition to the reporting requirements specified in other rules of this Chapter, each licensee or registrant shall provide a written report to the agency at the address specified in Rule .0111 of this Chapter within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

- (1) unintentional disconnection of the source assembly from the control cable;
- (2) inability to retract the source assembly to its fully shielded position and secure it in this position; or
- (3) failure of any component critical to safe operation of the device to properly perform its intended function.

(b) The licensee or registrant shall include the following information in each report required by Paragraph (a) of this Rule, and in each report of overexposure submitted pursuant to Section .1600 which involves failure of safety components of radiography equipment:

- (1) a description of the equipment problem;
- (2) cause of each incident, if known;
- (3) manufacturer and model number of equipment involved in the incident;
- (4) place, time and date of the incident;
- (5) actions taken to establish normal operations;
- (6) corrective actions taken or planned to prevent recurrence; and
- (7) qualifications of personnel involved in the incident.

Statutory Authority G.S. 104E-7.

## .0523 RECORDS OF INDUSTRIAL RADIOGRAPHY

(a) Each licensee or registrant shall maintain, for a period of three years after the record is made or until the agency authorizes disposition, the following records for inspection by the agency:

- (1) copies of the following documents:
  - (A) radioactive materials license or registration issued by the agency;
  - (B) the complete application submitted for the license or registration that includes all amendments; and
  - (C) current operating and emergency procedures;
- (2) records showing the receipt and transfer of all sealed sources that include:
  - (A) date;
  - (B) individual making the record;
  - (C) radionuclide;
  - (D) activity in curies or becquerel; and
  - (E) make, model and serial number of each sealed source and device;
- (3) records of the calibrations of radiation detection instrumentation;
- (4) records of leak tests in units of microcuries or becquerel;
- (5) records of quarterly inventories that include:
  - (A) radionuclide;
  - (B) activity in curies or becquerel;
  - (C) specific information on each sealed source and the radiographic exposure device, storage container or source changer which contains the sealed source to include:
    - (i) model numbers;
    - (ii) serial numbers; and
    - (iii) manufacturers names;
  - (D) location of sealed sources;
  - (E) name of the individual conducting the inventory; and
  - (F) the date of the inventory;
- (6) records of utilization logs showing the following information:
  - (A) a description of each radiographic exposure device, radiation machine or storage container in which the sealed source is located that includes:
    - (i) make;
    - (ii) model number; and
    - (iii) serial number;
  - (B) the identity and signature of the radiographer to whom assigned; and
- (C) the plant or site where used; and
- (D) dates of use that includes the dates removed and returned to storage;
- (7) records of inspection and maintenance of radiographic exposure devices, storage containers, associated equipment, source changers and radiation machines. The record shall include:
  - (A) date of the check;
  - (B) name of the individual performing the check;
  - (C) equipment involved;
  - (D) any defects found; and
  - (E) any repairs made and name of individual or company performing the repair;
- (8) records of alarm system tests for permanent radiographic installations;
- (9) records of the training of each radiographer and radiographer's assistant as follows:
  - (A) for initial training, copies of written tests, dates and results of oral tests and field examinations; and
  - (B) for periodic training, list of topics discussed, date(s) of the review and the attendees;
- (10) records for pocket dosimeters to include daily exposure readings and yearly operability checks;
- (11) records of reports received from the film badge or TLD processor. These records shall be maintained until the agency terminates the license or registration or until authorized by the agency;
- (12) records of exposure device surveys performed at the end of the work day and prior to placing the device in storage; and
- (13) records of area surveys required by Rule .0515 of this Section.

(b) Each licensee or registrant conducting operations at temporary jobsites shall maintain copies of the following documents and records at the temporary jobsite until the radiographic operation is completed:

- (1) operating and emergency procedures required by Rule .0513 of this Section;
- (2) radioactive materials license or registration;
- (3) evidence of training of the radiographers and radiographer's assistants. The individuals shall either

be listed on the radioactive materials license or registration and offer proper identification or shall have certification of his training and offer proper identification;

(4) evidence of the latest calibration of the radiation detection instrumentation in use at the site as required by Rule .0506 of this Section;

(5) evidence of the latest leak test of the sealed source required by Rule .0507 of this Section;

(6) records of the latest surveys required by Rule .0515 of this Section;

(7) records of current pocket dosimeter readings;

(8) shipping papers for the transportation of radioactive materials required by 10 CFR Part 71.5; and

(9) records of area surveys required by Rule .0515 of this Section.

(c) Each record required by this Rule shall be legible throughout the specified retention period. The record may be an original, a reproduced copy or microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of reproducing a clear copy throughout the required record retention period. The record may also be stored in electronic media with the capability for producing legible, accurate and complete records during the required record retention period. Records, such as letters, drawings and specifications shall include all pertinent information, such as stamps, initials and signatures. The licensee or registrant shall maintain safeguards against tampering with and loss of records.

Statutory Authority G.S. 104E-7.

## SECTION .1600 - STANDARDS FOR PROTECTION AGAINST RADIATION

### .1625 EXCEPTIONS TO POSTING REQUIREMENTS

(a) A licensee is not required to post caution signs in areas or rooms containing radioactive materials for periods of less than eight hours, if each of the following conditions is met:

(1) The materials are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation or radioactive materials in

excess of the limits established in the rules in this Section; and

(2) The area or room is subject to the licensee's control.

(b) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Rule .1624 of this Section provided that:

(1) The patient is being treated with sealed sources or has been treated with unsealed radioactive material in quantities less than 30 millicuries (110 MBq), or the measured dose rate at one meter from the patient is less than 0.005 rem (0.05 mSv) per hour; and

(2) There are personnel in attendance who will take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this Section and to operate within the ALARA provisions of the licensee's radiation protection program.

(c) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the source container or housing does not exceed 0.005 rem (0.05 mSv) per hour.

(d) Rooms or other areas in medical facilities that are occupied by patients while being treated with radiation from an accelerator are not required to be posted with a caution sign pursuant to Rule .1624(c) of this Section provided that:

(1) access to the room or area is posted in accordance with Rule .1624(b) of this Section; and

(2) there are personnel in attendance who shall provide assurance that:

(A) continuous audio and visual observation of the patient is maintained during treatment;

(B) all provisions of Subparagraph (b)(2) of this Rule are met; and

(C) the accelerator is secured in the "beam off" status at the end of each patient's treatment.

Statutory Authority G.S. 104E-7(a)(2).

**TITLE 18 - SECRETARY OF STATE**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of the Secretary of State, Securities Division intends to amend rule cited as 18 NCAC 6 .1801.

**The proposed effective date of this action is December 1, 1994.**

**The public hearing will be conducted at 10:00 a.m. on October 3, 1994 at the Securities Division Conference Room, Suite 100, 300 N. Salisbury St., Raleigh, NC 27603.**

**Reason for Proposed Action:** To define as an unethical business practice, an investment adviser's use of unregistered investment adviser representatives.

**Comment Procedures:** Interested persons may present oral or written statements at the public hearing, or in writing prior to the meeting by mail addressed to Mr. Gene Cella, Administrator, Securities Division, N.C. Dept. of the Secretary of State, 300 N. Salisbury St., Raleigh, NC 27603. For copies of any information related to the hearing call (919) 733-3924, or write to the aforementioned address. The comment period will end on October 3, 1994.

**CHAPTER 6 - SECURITIES DIVISION**

**SECTION .1800 - MISCELLANEOUS PROVISIONS - INVESTMENT ADVISERS**

**.1801 DISHONEST OR UNETHICAL PRACTICES**

(a) An investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of his duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser shall not engage in unethical business practices, including the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the

purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable examination of such of the client's financial records as may be provided to the investment adviser;

(2) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(3) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

(4) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(5) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;

(6) Borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of lending funds or securities;

(7) Lending money to a client unless the investment adviser is a financial institution engaged in the business of lending funds or a dealer, or unless the client is an affiliate of the investment adviser;

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature

of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation in which the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);

(10) Charging a client an advisory fee that is unreasonable in the light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources;

(11) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice which will be rendered;

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940;

(14) Disclosing the identity, affairs or investments of any client to any third party unless required by law to do so, or unless consented to by the client;

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940, unless the investment adviser is exempt from such requirements by virtue of Rule 206(4)-2(b);

(16) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance: the services to be provided; the term of the contract; the advisory fee or the formula for computing the fee; the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance; whether the contract grants discretionary authority to the adviser; and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; and

(17) Failing to disclose to any client or prospective client all material facts with respect to:

(A) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred dollars (\$500.00) from such client, six months or more in advance; or

(B) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients; and

(18) Utilizing an agent or subagent who satisfies the definition of an investment

adviser representative as set forth in G.S. 78C-2(3), where such agent or subagent is not registered as an investment adviser representative pursuant to G.S. 78C-16.

The conduct set forth in Rule .1801(a) is not inclusive. It also includes employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit.

(b) There shall be a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of Subparagraph (a)(17)(B) of this Rule for a period of ten years from the time of the event:

- (1) A criminal or civil action in a court of competent jurisdiction in which the person:
  - (A) was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business, fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
  - (B) was found to have been involved in a violation of an investment-related statute or regulation; or
  - (C) was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity;
- (2) Administrative proceedings before the Administrator, Securities and Exchange Commission, any other federal regulatory agency or any other state agency (any of the foregoing being referred to hereafter as "agency") in which the person:
  - (A) was found to have caused an investment-related business to lose its authorization to do business;
  - (B) was found to have been involved in a violation of an investment-related

statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business or otherwise significantly limiting the person's investment-related activities; or

- (C) was found to have engaged in an act or a course of conduct which resulted in the issuance by the agency of an order to cease and desist the violation of the provisions of any investment-related statute or rule; or
- (3) Self-Regulatory Organization (SRO) proceedings in which the person:
  - (A) was found to have caused an investment-related business to lose its authorization to do business; or
  - (B) was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars (\$2,500.00); or otherwise significantly limiting the person's investment-related activities.
- (c) The information required to be disclosed by Subparagraph (a)(17) shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.
- (d) For purposes of this Rule:
  - (1) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser which is not a natural person or to determine the general investment advice given to clients;
  - (2) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action;
  - (3) "Investment-related" means pertaining

to securities, commodities, banking, insurance, or real estate [including, but not limited to, acting as or being associated with a dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or fiduciary];

(4) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act; and

(5) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

(e) For purposes of calculating the ten-year period during which events are presumed to be material under Paragraph (b), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(f) Compliance with this Rule shall not relieve any investment adviser from the obligations of any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

*Statutory Authority G.S. 78C-18(b); 78C-30(a).*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Dept. of the Secretary of State, Land Records Management Division intends to amend rules cited as 18 NCAC 8 .0101 - .0104, .0402, .0501, .0601 -.0603, .0701, .0801, .0803, .0903, .1002 - .1003, .1101, .1209, adopt .0105 and repeal .0201 - .0209.*

*The proposed effective date of this action is November 1, 1994.*

*The public hearing will be conducted at 1:00 p.m. on August 30, 1994 at the Archdale Building, 5th Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC 27603.*

***Reason for Proposed Action:***

*18 NCAC 8 .0101 - .0104, .0402, .0501, .0601 -.0603, .0701, .0801, .0803, .0903, .1002 - .1003 - To change the name of the Dept. from EHN to Secretary of State; to change the name of the "program" to "Division"; to correct statute references from 143-345.6 to 147-54.3; to clarify what is "voluntary" in Rule .0103; and to make other technical clarifying changes.*

*18 NCAC 8 .0105 - To establish definitions for terms used in Chapter 8 in Title 18 NCAC.*

*18 NCAC 8 .0201 - .0209 - Definitions have been consolidated in Rule .0105 of this Chapter.*

*18 NCAC 8 .1101 - To change the effective date of statewide implementation of indexing standards from July 1, 1993 to January 1, 1995 per legislative change to G.S. 161-22.3 in the 1993 General Assembly.*

*18 NCAC 8 .1209 - To reduce the allowable hours from four to two for attendance at Society of Surveyors Chapter Meetings that will be credited toward NCPMA state recertification.*

***Comment Procedures:*** Interested persons may present statements either orally or in writing at the public hearing, or in writing through September 14, 1994 by mail addressed to Phil Stanley, Director, Land Records Management Division, NC Dept. of the Secretary of State, P.O. Box 27687, Raleigh, NC 27611. For copies of any information related to the hearing, call (919) 733-7006 or write to the aforementioned address.

**CHAPTER 8 - LAND RECORDS MANAGEMENT DIVISION**

**SECTION .0100 - GENERAL**

**.0101 PURPOSE**

The purpose of the Land Records Management Program Division is to encourage county governments to utilize modern methods, techniques, equipment, and documentation which will improve the quality of public services with respect to land records and achieve a high degree of standardization throughout the state. The program provides technical assistance and grant funds for the improvement of county land records. Since the funds available in any one year are sufficient to meet only a part of the total need, in making grants the state will place great emphasis on:

- (1) the creation of a more efficient standardized land record system; and

(2) the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operations and management.

Statutory Authority G.S. 102-15; 147-54.3.

#### .0102 FUNCTIONS

The Land Records Management Program Division provides statewide coordination, technical advice, policy guidance, and financial assistance to county governments with respect to all records pertaining to land parcels.

Statutory Authority G.S. 102-15 through 102-17; 147-54.3.

#### .0103 COUNTY PARTICIPATION

Participation by county governments in the land records modernization program, as set forth in Sections .0100 through .1000 of this Chapter by county governments is entirely voluntary and it is initiated only by an action of the board of county commissioners. If a board of commissioners chooses to initiate a land records modernization program and applies for a grant from this Department, the applicant shall adhere to all rules and procedures pursuant to Sections .0100 through .1000 of this Chapter.

Statutory Authority G.S. 102-16; 147-54.3.

#### .0104 ADMINISTRATION

Administration of the Land Records Management Program Division shall be in accordance with the administrative regulations rules prepared by the Secretary of Environment, Health, and Natural Resources State and made available to county governments from the Land Records Management Division of Land Resources, North Carolina Department of Environment, Health, and Natural Resources the Secretary of State.

Statutory Authority G.S. 102-17; 147-54.3.

#### .0105 DEFINITIONS OF TERMS

The definitions in this Rule shall apply to the terms used in this Chapter:

(1) "Act" means the Act to Provide Assistance to Counties for Improvement of Land Records, Chapter 1099, 1977 N.C. Session Laws.

(2) "Applicant" means a board of county commissioners.

(3) "Department" means the North Carolina Department of the Secretary of State.

(4) "Division" means the Land Records Management Program established in G.S. 147-54.3 and the statewide program for improvement of county land records.

(5) "Effective Date of Receipt of Applications" means the first day of the next quarter of the fiscal year (July 1, October 1, January 1, April 1) following actual receipt of the application in the Department.

(6) "Grant Allotment" means a binding agreement to pay grant funds in a lump sum or in installments to an applicant in accordance with the terms of the agreement. For this purpose, allotments shall in no case exceed one dollar (\$1.00) for every dollar of local tax funds expended on the project by the County. Federal or other state funds available to the project will not be eligible as matching money under the state program.

(7) "Inspection" means inspection or inspections of a project for which a grant has been made under the Act to determine compliance with applicable state and local laws and rules and other pertinent matters.

(8) "Project" means the work or works described in the application for a state grant, and which is to be undertaken by the County if a state grant is awarded and other required funds are obtained. It does not include any significant expansion of the project described in the application except as may be permitted under the provisions of Rule .0502 of this Chapter.

Statutory Authority G.S. 102-15; 102-16; 102-17; 147-54.3.

### SECTION .0200 - DEFINITIONS

#### .0201 LIMITATION

Definitions in this Section apply to the Land Records Management Program.

Statutory Authority G.S. 102-15 through 102-17; 143-345.6.

#### .0202 ACT

Act shall mean the Act to Provide Assistance to Counties for Improvement of Land Records,

Chapter 1099, Session Laws 1977.

Statutory Authority G.S. 102-15 through 102-17; 143-345.6.

**.0203 DEPARTMENT**

Department shall mean the North Carolina Department of Environment, Health, and Natural Resources.

Statutory Authority G.S. 102-15 through 102-17; 143-345.6.

**.0204 EFFECTIVE DATE OF RECEIPT OF APPLICATION**

Effective date of receipt of application shall mean the first day of the next quarter of the fiscal year (July 1, October 1, January 1, April 1) following actual receipt of the application in the Department of Environment, Health, and Natural Resources.

Statutory Authority G.S. 102-15 through 102-17; 143-345.6.

**.0205 GRANT ALLOTMENTS**

Grant allotments shall mean a binding agreement to pay grant funds in a lump sum or in installments, to an applicant in accordance with the terms of the agreement. For this purpose, allotments shall in no case exceed one dollar for every dollar of local tax funds expended on the project by the county. Federal or other state funds available to the project will not be eligible as matching money under the state program.

Statutory Authority G.S. 102-15; 143-345.6.

**.0206 INSPECTION**

Inspection shall mean inspection or inspections of a project for which a grant has been made under the act to determine compliance with applicable state and local laws and regulations, and other pertinent matters.

Statutory Authority G.S. 102-15 through 102-17; 143-345.6.

**.0207 APPLICANT**

Applicant is a board of county commissioners.

Statutory Authority G.S. 102-15 through 102-17; 143-345.6.

**.0208 LAND RECORDS MANAGEMENT DIVISION**

Land Records Management Program shall mean the N.C. Land Records Management Program as established in G.S. 143-345.6 and the statewide program for improvement of county land records established in G.S. 102-15, 102-16, and 102-17.

Statutory Authority G.S. 102-15 through 102-17; 143-345.6.

**.0209 PROJECT**

Project shall mean the work or works described in the application for a state grant, and which is to be undertaken by the county if a state grant is awarded and other required funds are obtained. It does not include any significant expansion of the project described in the application except as may be permitted under the provisions of Rule .0502 of this Subchapter.

Statutory Authority G.S. 102-15 through 102-17; 143-345.6.

**SECTION .0400 - ELIGIBLE APPLICANTS**

**.0402 QUALIFICATIONS**

No applicant shall be eligible for the award of a grant unless it demonstrates to the satisfaction of the Department of Environment, Health, and Natural Resources that the following:

- (1) The applicant is a board of county commissioners;
- (2) The applicant has the financial capacity to provide its share of the project costs. To the extent that the costs are to be provided on a pay-as-you-go basis, the full amount indicated from this source shall be represented by cash on hand and/or cash expected to be included in the applicant's annual budget for the years in which payments under the project contract will be due. To the extent that borrowed funds are anticipated, the applicant shall certify that the additional debt, together with the applicant's existing debt, is within the debt limitation provisions of the general laws of the state. In making this determination, the Department of Environment, Health, and Natural Resources may, in its discretion, seek the comments of the secretary of the local government commission when the applicant proposes the use of borrowed funds; and

(3) The applicant has substantially complied or will substantially comply with all applicable laws, rules, ~~regulations~~, and ordinances, state and local.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

## **SECTION .0500 - FUNDING**

### **.0501 GRANT LIMITATIONS**

Grants shall be made in such amount as the ~~Department of Environment, Health, and Natural Resources~~ shall deem necessary or appropriate under the circumstances of the grant application, but in no event shall any grant award exceed one dollar for every dollar of local tax funds expended on the project by the county.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

## **SECTION .0600 - APPLICATIONS**

### **.0601 SUBMITTING APPLICATIONS**

Applications for project grants for improvement or expansion of land records management systems shall be submitted to the ~~land records management section, Division of Land Resources, Department of Environment, Health, and Natural Resources~~ on the Land Records Management Grant Form (Form AA-16) Application. Applications and all supporting documentation, assurances, and other information called for in the application shall be submitted in such number and in such form as specified in the application.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

### **.0602 INSUFFICIENT INFORMATION**

Any application which does not contain information sufficient to permit the ~~Department of Environment, Health, and Natural Resources~~ to determine either the eligibility of the applicant or the assignment of a priority shall not be deemed as received until such information is furnished by the applicant to the ~~Department of Environment, Health, and Natural Resources~~.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

### **.0603 ADDITIONAL INFORMATION**

An applicant shall furnish information in addition

to, or supplemental to, the information contained in its application and supporting documentation upon request by the ~~Department of Environment, Health, and Natural Resources~~.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

## **SECTION .0700 - DETERMINATION OF ELIGIBILITY**

### **.0701 ELIGIBLE APPLICATIONS**

(a) Each application, and supporting documents, shall be reviewed by the ~~Department of Environment, Health, and Natural Resources~~ to determine if it contains all required information and meets grant eligibility requirements.

(b) Each applicant will be notified by the ~~Department of Environment, Health, and Natural Resources~~ within 30 days of the actual date of receipt of the application, of its eligibility for consideration for a project grant award.

(c) Eligible applications will be processed for priority determination for a grant award in accordance with these procedures.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

## **SECTION .0800 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS**

### **.0801 PRIORITIES**

(a) Each eligible application shall be assigned a priority for grant funds through use of the point system outlined in this Section.

(b) In determining the priority to be assigned to each eligible application, the ~~Department of Environment, Health, and Natural Resources~~ will give consideration to the following factors:

- (1) Primary consideration shall be given to those counties with long-range plans for the modernization of their land records.
- (2) Consideration shall be given to those counties which demonstrate a willingness to cooperate with all county offices involved with land records.
- (3) Consideration shall be given to those counties which have allocated funds for the modernization of land records.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

**.0803 POINT SYSTEM**

Within each category in Rule .0802 of this Section, priority points will be assigned in the amounts indicated in this Rule for the following factors:

- (1) Comprehensive long range county plan for modernization of land records (maximum -- 15 points);
- (2) Establishment of an office of land records manager (maximum -- 15 points);
- (3) Quality and detail of project description (maximum -- 10 points);
- (4) Fiscal responsibility of the applicant (maximum -- 30 points):
  - (a) adequate current appropriations provided (maximum -- 15 points);
  - (b) bond issue or other financing provided (maximum -- 15 points);
  - (c) budgetary appropriations for continuation and maintenance of land records system provided (maximum -- 15 points);
- (5) Status of Program. Points will be assigned in the following categories for completion of the tasks indicated according to specifications available from the ~~Division of Land Resources, Department of Environment, Health, and Natural Resources~~ (maximum -- 30 points):
  - (a) Aerial photography (maximum -- five points);
  - (b) Base maps (maximum -- five points);
  - (c) Cadastral maps (maximum -- five points);
  - (d) Parcel Identifiers. For each of the offices listed below which utilize assigned parcel identifiers, points will be awarded as follows: three points for each of the first two offices and one point for each additional office (maximum -- 10 points):
    - (i) register of deeds,
    - (ii) tax supervisor,
    - (iii) clerk of court,
    - (iv) county planner,
    - (v) building inspector,
    - (vi) other identified;
  - (e) Automated system implemented (maximum -- five points);
  - (f) One point shall be awarded if applicant has not received prior funding under this program;
  - (g) Administrative Discretion. Points may be awarded at the discretion of the

secretary of the department for favorable circumstances not covered by the criteria in other parts of this Rule (maximum -- five points).

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

**SECTION .0900 - GRANT AWARDS**

**.0903 WITHDRAWAL OF GRANT OFFER**

Failure of an applicant to arrange for necessary financing of the proposed projects, to award a contract (if necessary) for all or part of the proposed project and to fully execute a contract with the department for the payment of grant funds, within the fiscal quarter following the quarter in which the grant offer is made shall be sufficient cause for withdrawal of the grant offer. Prior to withdrawal of a grant offer, the department shall give due consideration to any extenuating circumstances presented by the applicant as reasons for such failure and the grant offer may be extended for an additional period of time if, in the judgment of the ~~Department of Environment, Health, and Natural Resources~~, such an extension is justified.

*History Note: Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

**SECTION .1000 - PAYMENT OF GRANTS**

**.1002 INSPECTION OF PROJECT**

(a) A project for which a grant has been made may be inspected by the ~~land records management office~~ Division to determine the degree of completion of the project, compliance with applicable laws, rules ~~and regulations~~, and other pertinent matters.

(b) Inspections shall be made by qualified personnel of the ~~land records management office~~ Division, by qualified professional engineers, or by other qualified state personnel who are approved by the ~~Department of Environment, Health, and Natural Resources~~ to make such inspection(s). If a federal agency makes an inspection of the project, such inspection may, at the sole discretion of the department, be accepted in lieu of an inspection by qualified state personnel.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

**.1003 AUDIT OF PROJECTS**

(a) An audit shall be required for each project for which a state grant has been made.

(b) If a federal agency making a grant to a project for which a state grant is made is required to make an audit or audits of the project, such audits may, at the discretion of the ~~Department of Environment, Health, and Natural Resources~~, be accepted in lieu of audits by qualified state personnel or qualified independent auditors as approved by the local government commission. Matching grant funds will not be used to carry out audits.

*Statutory Authority G.S. 102-15; 102-17; 147-54.3.*

## **SECTION .1100 - MINIMUM STANDARDS FOR INDEXING LAND RECORDS**

### **.1101 INTRODUCTION AND PURPOSE**

(a) The Registers of Deeds of North Carolina are dedicated to sound management practices, progressive land records modernization efforts, and the best possible assistance to the citizens who depend on their services. Toward this end, the N.C. Association of Registers of Deeds, in conjunction with the Real Property Section of the N.C. Bar Association, developed indexing standards which shall be administered statewide beginning July 1, 1993 January 1, 1995. The standards will bring uniformity to the methods used for indexing land records documents in each Registers of Deeds office and will ultimately benefit every person who uses a Register of Deeds facility in conducting any phase of a land parcel and title search.

(b) The Land Records Management Division, hereinafter referred to as "Division", is responsible for encouraging local and county governments to utilize modern methods, techniques, equipment, and documentation which will improve the quality of public service with respect to land records and to achieve a high degree of standardization throughout the State. The Division also provides technical assistance to local and county governments in their efforts to further enhance their abilities to provide the best possible service to their public.

(c) The Indexing Standards, hereinafter referred to as "Standards", published in August 1990 and approved by the N.C. Association of Registers of Deeds in September 1990, and by the Real Property Section of the N.C. Bar Association in November 1990, are hereby incorporated by reference including any subsequent amendments and editions. The Standards contain uniform

procedures to be used by all Registers of Deeds for indexing land records. Copies of the Standards may be viewed or obtained by contacting the Land Records Management Division, N.C. Department of the Secretary of State, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7006. The cost for receiving a copy of the standards will be twenty cents per page (\$.20) to cover reproduction and postage.

*Statutory Authority G.S. 147-37; 147-37; 147-54.3 (b1); 150B-21.6; 161-22.3.*

## **SECTION .1200 - MINIMUM CERTIFICATION REQUIREMENTS FOR LOCAL GOVERNMENT PROPERTY MAPPERS**

### **.1209 COURSES OF INSTRUCTION FOR RECERTIFICATION**

(a) The courses of instruction with corresponding hours that will be credited toward recertification are as follows:

	COURSE	HOURS
(1)	AM/FM International	24 hours
(2)	GIS/LIS	24 hours
(3)	IAAO Course #6	24 hours
(4)	IOG Listing & Assessing	16 hours
(5)	National URISA	24 hours
(6)	NC ASPRS	8 hours
(7)	NC GIS Conference	8 hours
(8)	NC Surveyors Conference	16 hours
(9)	NC URISA	4 hours
(10)	NCPMA Fall Conference	16 hours
(11)	NCPMA GIS Conference	8 hours
(12)	NCPMA Mapping School	24 hours
(13)	NCPMA Regional Workshops	8 - 16 hours
(14)	Society of Surveyors Chapter Meetings	4 <u>2</u> hours ( <u>No more than 12 hours credit shall be allowed for this course in a two year period.</u> )
(15)	Surveyors Institute	24 hours
(16)	URISA Workshop	8 - 16 hours

(b) An applicant shall complete at least 24 hours of the courses listed in Paragraph (a) of this Rule every two years to be considered for recertification. The credit hours may include a combination of courses equalling 24 hours or one course equaling 24 hours.

(c) All accrued credit hours shall terminate with the certification renewal.

Statutory Authority G.S. 147-54.4(b); 147-54.4(c); 147-54.4(e).

**TITLE 19A - DEPARTMENT OF TRANSPORTATION**

***Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rules cited as 19A NCAC 2B .0217; 2D .0801 and .0816.***

***The proposed effective date of this action is December 1, 1994.***

***Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.***

***Reason for Proposed Action:***

***19A NCAC 2B .0217 - This rule change will allow municipalities to keep All America City signs in place for longer than the one year of designation if the year is displayed.***

***19A NCAC 2D .0801 - The changes will modify the way affiliated firms, one or more companies owned by the same corporate officers, are pre-qualified and requalified to bid on highway projects.***

***19A NCAC 2D .0816 - The changes will modify the way affiliated firms are disqualified from bidding on highway construction projects.***

***Comment Procedures: Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rules are published or until the date of any public hearing held on the proposed rules, whichever is longer.***

**CHAPTER 2 - DIVISION OF HIGHWAYS**

**SUBCHAPTER 2B - HIGHWAY PLANNING**

**SECTION .0200 - TRAFFIC ENGINEERING**

**.0217 ALL AMERICA CITY SIGNS**

(a) Primary and Secondary Systems. Signs on

primary and secondary system roads may include the All America City Shield. The actual design of the sign to be used must be submitted to the Manager of Traffic Engineering for approval. Only one such sign may be erected on any approach to the municipality and that sign shall be erected at or near the city limit.

(b) Since the All America City award is for a period of one year only, these signs shall be removed after they have been in place for a period of one year. The erection, maintenance, and removal of these signs shall be at no cost to the Department of Transportation. Municipalities may display the All America City sign for more than one year if the year in which the award was received is displayed within or directly beneath the logo.

(c) Interstate System. The use of the All America City Shield will not be permitted on the interstate. However, a standard interstate type sign, with the message ALL AMERICA CITY, consisting of white letters on a green background may be permitted beneath the standard city limit sign. If this is not possible, a sign with the message "CITY NAME - ALL AMERICA CITY" may be erected on its own supports provided this can be done in conformance with the "Manual on Uniform Traffic Control Devices" and the latest safety standards.

(d) Signs erected on the interstate must have prior approval of the Department of Transportation and must be located and erected under the supervision of Department of Transportation personnel. They must be removed one year after their erection unless the city should receive the award for the second consecutive year. Their erection, maintenance, and removal must be at no cost to the Department of Transportation, exclusive of the necessary supervision involved.

Statutory Authority G.S. 136-18(5); 136-30.

**SUBCHAPTER 2D - HIGHWAY OPERATIONS**

**SECTION .0800 - PREQUALIFICATION: ADVERTISING AND BIDDING REGULATIONS**

**.0801 PREQUALIFYING TO BID: REQUALIFICATION**

(a) In order to ensure that contracts are awarded to responsible bidders, prospective Prospective bidders shall prequalify with the Department. The requirements for prequalification are as follows:

(1) Applicant must submit a completed

NCDOT Experience Questionnaire along with any additional supporting information requested by the Department.

(2) Applicant must demonstrate that he has sufficient ability and experience in related highway construction experience projects to perform the work specified in the contract (type and dollar value of previous contracts) NCDOT contracts, including the type and dollar value of previous contracts.

(3) Applicant must demonstrate a history of successful performance and completion of projects in a timely manner, subject to the contractual time adjustments.

(4) Applicant must demonstrate the financial ability to furnish bonds as specified in G.S. 44A-26.

(5) Applicant must demonstrate sufficient available equipment to perform highway construction contracts in a timely manner.

(6) Applicant must demonstrate sufficient available experienced personnel to perform highway construction contracts. The identities and qualifications of both Both management and labor work force shall be addressed provided.

(7) Applicant must provide names and addresses of persons for whom the firm has performed related type work. Responses from the references must be on Department of Transportation forms and must be received by the Department prior to evaluating the request for prequalification.

(8) Applicant must provide any information requested concerning the corporate and operational management structure of the company, the identity of persons or entities owning stock or other equity interest in the company, and the relationship between the applicant and any other company prequalified with the Department or applying for prequalification.

Any prospective bidder, not prequalified, may request a NCDOT Experience Questionnaire form from the State Highway Construction and Materials Engineer, Division of Highways, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The Experience Questionnaire form must be completed in its entirety and signed by an

officer of the firm; the officer's signature shall be notarized. In addition to submitting the Experience Questionnaire form as set forth in this Rule, the prospective bidder shall submit supporting information in a format of his/her choosing to address the requirements listed in this Rule. All required statements and documents shall be filed with the State Highway Construction and Materials Engineer by the prospective bidder at least two weeks prior to the date of opening of bids. A bid shall not be opened unless all prequalification requirements have been met by the bidder and have been found to be acceptable by the Chief Engineer-Operations.

(b) Upon a determination by the Department that all prequalification requirements have been met, the applicant shall be assigned a Prequalification Number. This Prequalification Number shall thereafter be assigned to all applicants for prequalification or requalification which the Department determines are under sufficient common ownership and management control to warrant prequalification as a single entity. This determination by the Department shall be based on the information submitted with the Experience Questionnaire and any other information obtained by the Department.

(c) (b) Bidders shall comply with all applicable laws regulating the practice of general contracting as contained in G.S. 87.

(d) (e) All bidders must requalify annually. To requalify, the prospective bidder must submit a completed Experience Questionnaire form, acceptable to the State Highway Construction and Materials Engineer, on or before the anniversary date of the original prequalification. Experience Questionnaire forms shall be furnished approximately 30 days prior to the anniversary date and must be completed and executed in the same manner as the original form.

(d) After reviewing the items referenced in Paragraph (a) of this Rule, the State Highway Construction and Materials Engineer shall notify the prospective bidder in writing of the response to his request for prequalification.

*Statutory Authority G.S. 136-18(1); 136-28.1; 136-44.1; 136-45; 143-350(f).*

#### **.0816 DISQUALIFICATION OF BIDDERS**

(a) The Department may disqualify Any one of the following causes may be justification for disqualifying a contractor from further bidding until he has applied for and have has been re-qualified in accordance with Rule .0801 of this

Section for any of the following reasons:

- (1) unsatisfactory progress in accordance with the terms and conditions of existing or previous contracts as specified in Article 108-8 or Article 105-7 of the Standard Specifications for Roads and Structures.
- (2) being declared in default in accordance with Article 108-9 of the Standard Specifications for Roads and Structures.
- (3) uncompleted contracts which, in the judgement of the Chief Engineer, may hinder or prevent the prompt timely completion of additional work if awarded.
- (4) failure to comply with prequalification requirements.
- (5) the submission of more than one bid for the same work from contract by an individual, partnership, joint venture, or corporation prequalified under the same or different names Prequalification Number.
- (6) evidence of collusion among bidders; each participant in such collusion will be disqualified.
- (7) failure to furnish a non-collusion affidavit upon request.
- (8) failure to comply with Article 108-6 of the Standard Specifications for Roads and Structures.
- (9) failure to comply with a written order of the Engineer as provided in Article 105-1 of the Standard Specifications for Roads and Structures or oral directives given by the Department's project personnel, if in the judgment of the Chief Engineer such failure is of sufficient magnitude to warrant disqualification.
- (10) failure to satisfy the Disadvantaged Business Enterprise requirements of the project special provisions.
- (11) the Department has not received the amount due under a forfeited bid bond or under the terms of a performance bond.
- (12) failure to submit within 60 days after being requested by the Engineer, or the submission of false information in, the documents required by Article 109-9 of the Standard Specifications for Roads and Structures the documents required by Article 109-9 of the Standard Specifications for Roads and Structures

within 60 days after being requested by the Engineer, or the submission of false information.

- (13) failure to return overpayments as directed by the Engineer.

(b) Upon a determination that a contractor should be disqualified for one or more of the reasons listed in Paragraph (a) of this Rule, the Department may, in its discretion, remove all entities prequalified under the same Prequalification Number.

Statutory Authority G.S. 136-18(1); 136-28.1.

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 34 - BOARD OF MORTUARY SCIENCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Mortuary Science intends to amend rules cited as 21 NCAC 34A .0126, 34B .0108, .0125, .0308, .0401, .0405, .0509, .0609 and 34D .0303; and adopt 34B .0212.*

*The proposed effective date of this action is November 1, 1994.*

*The public hearing will be conducted at 11:00 a.m. on September 16, 1994 at the Board Room, 801 Hillsborough Street, Raleigh, NC 27603.*

**Reason for Proposed Action:**

**21 NCAC 34A .0126** -- To change the reference to the name of the Board's administrative officer from Executive Secretary to Executive Director.

**21 NCAC 34B .0108** -- To change the reference to the name of the Board's administrative officer from Executive Secretary to Executive Director.

**21 NCAC 34B .0125** -- To change the reference to the name of the Board's administrative officer from Executive Secretary to Executive Director.

**21 NCAC 34B .0212** -- To establish a procedure for disabled examination applicants to request special accommodations to take the examination.

**21 NCAC 34B .0308** -- To change the reference to the name of the Board's administrative officer from Executive Secretary to Executive Director.

**21 NCAC 34B .0401** -- To require that applications for approval of continuing education courses

*be submitted to the Board at least 30 (was 15) days prior to date of enrollment.*

**21 NCAC 34B .0405 -- To require that applications for approval of continuing education courses be submitted to the Board at least 30 (was 15) days prior to date of enrollment.**

**21 NCAC 34B .0509 -- To change the reference to the name of the Board's administrative officer from Executive Secretary to Executive Director.**

**21 NCAC 34B .0609 -- To change the reference to the name of the Board's administrative officer from Executive Secretary to Executive Director.**

**21 NCAC 34D .0303 -- To provide that the Board shall approve, but no longer prepare, certificates of performance and similar claim forms.**

**Comment Procedures:** Interested persons may present statements, orally and in writing, at the public hearing and in writing prior to the hearing by mail addressed to the NC Board of Mortuary Science, P.O. Box 27368, Raleigh, NC 27611-7368.

#### **SUBCHAPTER 34A - BOARD FUNCTIONS**

#### **SECTION .0100 - GENERAL PROVISIONS**

##### **.0126 COMPLAINTS; PRELIMINARY DETERMINATIONS**

(a) A person who believes that any person, firm or corporation is in violation of any provision of G.S. 90, Article 13A, 13C or 13D, or Title 21, Chapter 34, of the North Carolina Administrative Code, may file a written complaint with the Board's staff. If the accused is subject to the jurisdiction of the Board, the complaint shall be handled pursuant to this Rule.

(b) A complaint shall be handled initially by the Board's Executive Secretary Director, Director of Preneed Regulation or their staff designees, who may dismiss it as unfounded, frivolous or trivial. Complaints against persons subject to the Board's jurisdiction pursuant to G.S. 90, Article 13A and 13C, shall be handled by the Executive Secretary Director or staff designated by him or her, and complaints against persons subject to the Board's jurisdiction pursuant to G.S. 90, Article 13D, shall be handled by the Director of Preneed Regulation or staff designated by him or her.

(c) Unless the complaint is dismissed pursuant to Paragraph (b) of this Rule, the Executive Secretary Director, Director of Preneed Regulation or their staff designees shall notify the accused of the

complaint in writing. Such notice shall be sent by certified mail, return receipt requested; shall state the allegations as contained in the complaint, or may enclose a copy of the complaint; and shall contain a request that the accused submit a response in writing within 10 days from the date the notice of the complaint is received by the accused.

(d) If the accused admits the allegations, and if, in the opinion of the Executive Secretary Director, Director of Preneed Regulation or their staff designees, the matter does not merit review by the Board's disciplinary committee, the Executive Secretary Director, Director of Preneed Regulation or their staff designees shall accept the admission of guilt and shall acknowledge the admission in a letter to the accused.

(e) If the accused admits the allegations, and if, in the opinion of the Executive Secretary Director, Director of Preneed Regulation or their staff designees, the matter merits review by the Board's disciplinary committee, the Executive Secretary Director, Director of Preneed Regulation or their staff designees shall refer the matter to the committee. After reviewing the allegations and response, the committee shall make a preliminary determination of the charges and shall recommend to the Board which of the actions in Paragraph (h) of this Rule should be taken.

(f) If the accused does not respond to or denies the allegations, the Board's Executive Secretary Director, Director of Preneed Regulation or their staff designees shall investigate the allegations, and they may dismiss the complaint as unfounded, frivolous or trivial, or may refer the complaint, response, if any, and any other available evidence to the Board's disciplinary committee for review. From such review, the committee shall make a preliminary determination and shall recommend to the Board which of the actions in Paragraph (h) of this Rule should be taken.

(g) The complaint, response, if any, other evidence and disposition of each case shall be placed in a permanent file of the accused. When a second complaint is filed against the accused during a period of twelve months, or a third complaint is filed against the accused during any period of time, the Executive Secretary Director, Director of Preneed Regulation or their staff designees shall present the file to the disciplinary committee for a review. From such review, the committee shall make a preliminary determination of the new complaint and shall recommend to the Board which of the actions in Paragraph (h) of this Rule should be taken.

(h) In accordance with Paragraphs (e) through (g) of this Rule, the disciplinary committee shall review the complaint and the file, if applicable, shall make a preliminary determination, and shall recommend to the Board that one of the following actions be taken:

- (1) that the complaint be dismissed as unfounded, frivolous or trivial;
- (2) that, in the case of an alleged violation of G.S. 90, Article 13A, the case be compromised pursuant to G.S. 90-210.25(e)(1) or that it be set for a contested case hearing in accordance with G.S. 150B, Article 3A, and the rules of the Board;
- (3) that, in the case of an alleged violation of G.S. 90, Article 13C, the case be set for a contested case hearing in accordance with G.S. 150B, Article 3A, and the rules of the Board; or
- (4) that, in the case of an alleged violation of G.S. 90, Article 13D, the case be set for a contested case hearing before an administrative law judge, as provided by G.S. 90-210.69(e).

(i) The Board may accept or reject, in whole or in part, the recommendations of the disciplinary committee.

*Statutory Authority G.S. 90-210.23(a); 90-210.25(e); 90-210.43(f), (g); 90-210.50(a); 90-210.69.*

#### SUBCHAPTER 34B - FUNERAL SERVICE

##### SECTION .0100 - RESIDENT TRAINEES

###### .0108 TRAINEE POCKET CERTIFICATE

Form BMS-11 is the resident trainee pocket certificate. It is used for certifying that the holder thereof is entitled to practice as a resident trainee. It contains space for the date, name of the trainee, field of traineeship, expiration date, name of the licensed supervisor and the signature of the Executive Secretary Director of the Board.

*Statutory Authority G.S. 90-210.23(a); 90-210.25(a)(4); 150B-11(1).*

###### .0125 MORTUARY SCIENCE STUDENT PERMIT CARD

Form BMS-24 is the mortuary science student permit card. It is used for indicating that the

holder thereof is enrolled in a mortuary science college in North Carolina and that, while enrolled, is permitted to participate in activities of funeral service, under supervision, for the purpose of instruction. It contains the name of the student, number of the card, and spaces for the signatures of the student and the Executive Secretary Director or other designated agent of the Board.

*Statutory Authority G.S. 90-210.23(a); 90-210.29; 150B-11(1).*

#### SECTION .0200 - EXAMINATIONS

##### .0212 DISABILITIES OF APPLICANTS FOR EXAMINATIONS

Applicants for examinations shall inform the Board in writing, with their applications, if they have a disability which requires a special accommodation to take the examination. Applicants shall state the nature of the disability and the type of accommodation requested. The Board may require proof of the disability.

*Statutory Authority G.S. 90-210.23(a); 90-210.25(a)(1), (2), (3).*

#### SECTION .0300 - LICENSING

##### .0308 RENEWALS: NOTICES

The Executive Secretary Director of the Board shall, on or about December 1 of each year, mail to each licensee, to each holder of a funeral establishment permit and to each holder of a courtesy card a written notice that said license, permit or courtesy card shall expire as provided by law unless renewed.

*Statutory Authority G.S. 90-210.23(a); 150B-11(1).*

#### SECTION .0400 - CONTINUING EDUCATION

##### .0401 ESTABLISHMENT AND APPROVAL OF COURSES

The Board shall cause at least five hours of continuing education courses to be offered to the licensees annually, either directly or through other organizations or persons procured for such purpose. The Board shall mail to each licensee for whose benefit the course is offered, at least 15 days prior to the date of enrollment, notice of the course and the amount of any registration fee to be charged. The Board may approve other courses, provided that descriptions of such courses are

submitted to the Board at least 45 30 days prior to the date of enrollment. No course shall be approved unless the Board finds that the course will satisfy the purposes set forth in G.S. 90-210.25(a)(5). All courses shall be established, and notices thereof given, by license category; and registration must be open to all persons in the license category.

*Statutory Authority G.S. 90-210.23(a); 90-210.25(a)(5); 150B-11(1).*

**.0405 APPLICATION FORM FOR APPROVAL OF COURSE**

Form BMS-42 is the application for approval of a course of continuing education. It is used for making application for board Board approval of a course for continuing education credit. It contains space for the date, name of the organization or person making the application, description of the course, name and credentials of the instructor, and a statement by the applicant of how the course will aid the licensee in serving the public. The form must be filed with the Board, when making application, at least 45 30 days prior to the date of enrollment established for the course.

*Statutory Authority G.S. 90-210.23(a); 90-210.25(a)(5); 150B-11(1).*

**SECTION .0500 - OUT-OF-STATE LICENSEES**

**.0509 COURTESY CARD FORM**

Form BMS-38 is the courtesy card. It is used for certifying that the holder thereof is entitled to practice in North Carolina in the limited manner prescribed by G.S. 90-210.25(b)(3). It contains the name and address of the holder, the number of the card, the name of the license category, expiration date, the signature of the Executive Secretary Director or other designated agent of the Board, a summary of the privileges permitted under the courtesy card and space for the signature and license number of the person to whom the card is issued.

*Statutory Authority G.S. 90-210.23(a); 90-210.25(b)(3); 150B-11(1).*

**SECTION .0600 - FUNERAL ESTABLISHMENTS**

**.0609 FUNERAL ESTABLISHMENT PERMIT FORM**

Form BMS-19 is the funeral establishment permit. It is used for certifying that the holder thereof is registered with the Board as a funeral establishment. It contains the name of the establishment, the signatures of the President and Executive Secretary Director of the Board and the date.

*Statutory Authority G.S. 90-210.23(a); 90-210.25(d); 150B-11(1).*

**SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS**

**SECTION .0300 - OPERATIONS**

**.0303 CERTIFICATE OF PERFORMANCE**

(a) The certificate of performance or similar claim form as required by G.S. 90-210.64(a) shall be a form as prepared approved by the Board and shall require the following information: the names, addresses and preneed funeral establishment license numbers of the performing funeral establishment and the contracting funeral establishment; the name of the deceased beneficiary of the preneed funeral contract; the date of death and the county where the death certificate was or will be filed; the invoice amount; certification that the contract was or was not performed in whole or in part and how the funds will be applied; the name and address of the financial institution where the preneed trust funds are deposited and the trust account or certificate number; the name and address of the insurance company which issued the prearrangement insurance policy and the policy number; and the amount and the date of the payment by the financial institution or insurance company and to whom paid.

(b) The form shall be completed by each funeral establishment performing any services or providing any merchandise pursuant to the preneed funeral contract, or, if none are performed or provided, by the contracting funeral establishment. The form shall be presented to the financial institution or insurance company for payment. Within 10 days following its receipt of payment, any funeral establishment which is required to complete the form shall mail a copy to the Board.

*Statutory Authority G.S. 90-210.69(a); 90-210.64(a); 90-210.68.*

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## CHAPTER 36 - BOARD OF NURSING

**Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend rule cited as 21 NCAC 36 .0226.**

**The proposed effective date of this action is December 1, 1994.**

**The public hearing will be conducted at 1:00 p.m. on September 22, 1994 at the Greenville Hilton Inn, 207 SW Greenville Boulevard, Greenville, N.C.**

**Reason for Proposed Action:** To clarify the language for the legal scope of nurse anesthesia practice.

**Comment Procedures:** Any person wishing to present oral testimony relevant to proposed rule may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written comments concerning this amendment must be submitted by September 16, 1994, to: North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, ATTN: Jean H. Stanley, APA Coordinator.

**Editor's Note:** This Rule was filed as a temporary rule effective July 25, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

## SECTION .0200 - LICENSURE

### .0226 NURSE ANESTHESIA PRACTICE

(a) Only those registered nurses who meet the qualifications as outlined in Paragraph (b) of this Rule may perform nurse anesthesia activities outlined in Paragraph (c) of this Rule.

(b) Qualifications and Definitions:

(1) The registered nurse who completes a program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs, is credentialed as a certified registered nurse anesthetist by the Council on Certification of Nurse Anesthetists, and

who maintains recertification through the Council on Recertification of Nurse Anesthetists, may perform nurse anesthesia activities in collaboration with a physician, dentist, podiatrist, or other lawfully qualified health care provider, but may not prescribe a medical treatment regimen or make a medical diagnosis except under the supervision of a licensed physician.

(2) The graduate nurse anesthetist is a registered nurse who has completed a program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs, is awaiting initial certification by the Council on Certification of Nurse Anesthetists and is listed as such with the Board of Nursing. The graduate nurse anesthetist may perform nurse anesthesia activities under the supervision of a certified registered nurse anesthetist, physician, dentist, podiatrist, or other lawfully qualified health care provider provided that initial certification is obtained within 18 months after completion of an accredited nurse anesthesia program. Collaboration is a process by which the certified registered nurse anesthetist or graduate nurse anesthetist works with one or more qualified health care providers, each contributing his or her respective area of expertise consistent with the appropriate occupational licensure laws of the State and according to the established policies, procedures, practices and channels of communication which lend support to nurse anesthesia services and which define the role(s) and responsibilities of the qualified nurse anesthetist within the practice setting. The individual nurse anesthetist maintains accountability for the outcome of his or her actions.

(c) Nurse Anesthesia activities and responsibilities which the appropriately qualified registered nurse anesthetist may safely accept are dependent upon the individual's knowledge and skills and other variables in each practice setting as outlined in 21 NCAC 36 .0224(a). These activities include:

- (1) Preanesthesia preparation and evaluation of the client to include:
  - (A) performing a pre-operative health assessment;

- (B) recommending, requesting and evaluating pertinent diagnostic studies; and
- (C) selecting and administering preanesthetic medications.
- (2) Anesthesia induction, maintenance and emergence of the client to include:
  - (A) securing, preparing and providing basic safety checks on all equipment, monitors, supplies and pharmaceutical agents used for the administration of anesthesia;
  - (B) selecting, implementing, and managing general anesthesia, monitored anesthesia care, and regional anesthesia modalities, including administering anesthetic and related pharmaceutical agents, consistent with the client's needs and procedural requirements;
  - (C) performing tracheal intubation, extubation and providing mechanical ventilation;
  - (D) providing appropriate perianesthetic invasive and non-invasive monitoring, recognizing abnormal findings, implementing corrective action, and requesting consultation with appropriately qualified health care providers as necessary;
  - (E) managing the client's fluid, blood, electrolyte and acid-base balance; and
  - (F) evaluating the client's response during emergency from anesthesia and implementing pharmaceutical and supportive treatment to ensure the adequacy of client recovery from anesthesia.
- (3) Postanesthesia Care of the client to include:
  - (A) providing postanesthesia follow-up care, including evaluating the client's response to anesthesia, recognizing potential anesthetic complications, implementing corrective actions, and requesting consultation with appropriately qualified health care professionals as necessary;
  - (B) initiating and administering respiratory support to ensure adequate ventilation and oxygenation in the immediate postanesthesia period;
  - (C) initiating and administering pharmacological or fluid support of the cardiovascular system during the immediate postanesthesia period;
- (D) documenting all aspects of nurse anesthesia care and reporting the client's status, perianesthetic course, and anticipated problems to an appropriately qualified postanesthetic health care provider who assumes the client's care following anesthesia consistent with 21 NCAC 36 .0224(f); and
- (E) releasing clients from the postanesthesia care or surgical setting as per established agency policy.

(d) Other clinical activities for which the qualified registered nurse anesthetist may accept responsibility include, but are not limited to:

- (1) inserting central vascular access catheters and epidural catheters;
- (2) identifying, responding to and managing emergency situations, including initiating and participating in cardiopulmonary resuscitation;
- (3) providing consultation related to respiratory and ventilatory care and implementing such care according to established policies within the practice setting; and
- (4) initiating and managing pain relief therapy utilizing pharmaceutical agents, regional anesthetic techniques and other accepted pain relief modalities according to established policies and protocols within the practice setting.

*Statutory Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21; 90-171.42(b).*

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**CHAPTER 50 - BOARD OF EXAMINERS  
OF PLUMBING, HEATING AND FIRE  
SPRINKLER CONTRACTORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors intends to amend rules cited as 21 NCAC 50 .0407 - .0408, .0412, .0505, .1102 and .1104.*

*The proposed effective date of this action is November 1, 1994.*

*The public hearing will be conducted at 8:30 a.m. on September 14, 1994 at the State Board of*

*Examiners of Plumbing, Heating & Fire Sprinkler Contractors, 801 Hillsborough Street, Suite 403, Raleigh, NC 27603.*

***Reason for Proposed Action:***

**21 NCAC 50 .0407** - *To require a firm and licensee to notify the Board within 30 days of any changes in status of license.*

**21 NCAC 50 .0408** - *To require licensee to notify Board within 30 days of any changes in location or mailing address from that shown on renewal.*

**21 NCAC 50 .0412** - *To provide notice to licensees of increased sanctions resulting from repeat offenses.*

**21 NCAC 50 .0505** - *Amendment to Paragraph (a) tightens the supervision obligation of licensees and gives notice of the type activities which are inconsistent with adequate supervision of unlicensed employees. Paragraph (c) reduces to writing a long established standard against which competence in design, as contrasted with installation, may be judged.*

**21 NCAC 50 .1102** - *To increase license renewal fees charged within the range authorized by the Legislature.*

**21 NCAC 50 .1104** - *To recover costs of providing documents.*

**Comment Procedures:** Persons wishing to present oral data, views or argument on these proposed rules or rule changes may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to ten (10) minutes. The address of the Board is 801 Hillsborough St., Suite 403, Raleigh, N.C. Written comments or arguments may be presented at any time through September 14, 1994.

**Editor's Note:** This Rule (21 NCAC 50 .1104) is subject to review by Rules Review Commission.

**SECTION .0400 - GENERAL PROCEDURES**

**.0407 CORPORATIONS, PARTNERSHIPS AND TRADE NAMES**

(a) A license may be issued or renewed in the name of a corporation, partnership or business with a trade name upon compliance with the provisions of G.S. 87-26, verified by the execution of forms furnished by the Board.

(b) Additional licensees may be added to licenses issued in the above manner upon verifications of compliance with the provisions of G.S. 87-26. In the event a licensee terminates his association with a corporation, partnership, or business with a trade name, both the firm and the licensee are obligated to notify the Board within 30 days he shall immediately notify the executive secretary of the Board.

(c) A person who has a license which has been expired less than three years may be added to an active license issued in the name of a corporation, partnership or business with a trade name, upon written request, completion of forms provided by the Board and payment of the fee set forth in Rule .1102 of this Chapter.

(d) The license number assigned to a corporation, partnership, or business with a trade name shall be that of the first licensee listed on the license.

(e) A corporation, partnership or business with a trade name which is issued a license is subject to the provisions of G.S. 87, Article 2 and to these Rules.

*Statutory Authority G.S. 87-18; 87-22; 87-26.*

**.0408 CHANGE OF TRADE NAME**

(a) The trade name under which a license is issued may be changed upon request to and approval by the Board. If the Board approves the name change, the last license issued to the licensee must be returned to the executive secretary.

(b) A license will be issued or renewed using any corporate name, partnership name, or trade name which is not identical to a name already in use according to the records of the Board.

(c) The licensee shall notify the Board of any change in location or mailing address from that shown on the last license renewal invoice within 30 days after the change takes place.

*Statutory Authority G.S. 55B-5; 87-18; 87-26.*

**.0412 GUIDELINES ON DISCIPLINARY ACTIONS**

(a) The provisions of G.S. 87, Article 2, the rules of the Board and the matters referenced therein are part of the guidelines by which the conduct of an entity subject to the authority of the Board are evaluated.

(b) The Board may suspend a license or impose probation provisions for violations of 21 NCAC 50 .0402, 21 NCAC 50 .0403, 21 NCAC 50 .0404 and 21 NCAC 50 .0405. Repeated violations may result in revocation.

(c) The Board may suspend a contractor's license or impose probationary terms when a licensee fails to comply with the supervision requirements of 21 NCAC 50 .0404, 21 NCAC 50 .0406 or 21 NCAC 50 .0505. Multiple violations within the same proceeding may result in revocation.

(d) The Board may suspend or revoke a license where it is found that the licensee has failed to comply with the minimum standards of competence as set forth in 21 NCAC 50 .0505(b). The Board may condition the subsequent reinstatement of license upon passing of the Board's examination or completion of specified educational courses. The Board may impose additional conditions of reinstatement.

(e) The Board may suspend or revoke the license of a contractor where it is found that the contractor abandoned a job after obtaining funds from the owner.

(f) As a part of these provisions, the Board may revoke the license of any licensee where it is found that the contractor through a violation of G.S. 87, Article 2 has increased the risk of exposure to carbon monoxide or other harmful vapors, fire, or damage resulting therefrom, the release of sewage, methane gas, or contamination of the potable water supply.

(g) The foregoing provisions are illustrative guidelines of sanctions imposed by the Board and are not intended to limit the authority of the Board or the variety of facts for which action may be required in a particular situation.

Statutory Authority G.S. 87-18; 87-23.

## SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

### .0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE

(a) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision requires that review of the work done pursuant to the license be performed while the work is in progress. To provide adequate supervision and reduce risk to the public a licensee is deemed unavailable for general supervision when:

(1) engaged in educational pursuits on a full time basis, i.e., 12 or more credit

hours per semester or quarter;  
(2) engaged in work whether paid or as a volunteer, for any person, agency or organization on a full time basis;  
(3) self employed in a field other than plumbing, heating or fire sprinkler contracting.

Work performed by an unlicensed firm under the foregoing conditions is deemed to have been unsupervised.

(b) The Board recognizes the provisions of the North Carolina Building Code, including the provisions of the Southern Building Code to the extent adopted by the Building Code Council of North Carolina from time to time as the minimum standard of competence applicable to contractors licensed by the Board. Licensees are required to design and install systems which meet or exceed the minimum standards of the North Carolina State Building Code and Manufacturer's specifications and installation instructions and accepted standards prevailing in the industry.

(c) A minimum standard of competence in the design and installation of a heating or air conditioning system or the replacement of a furnace, condenser or other major component of a heating system is the creation of a system which will maintain temperatures at all points in the conditioned area in each season and in each design area of the State within the accepted ranges prescribed by the North Carolina State Building Code, Manual J, Load Calculation for Residential Winter and Summer Air Conditioning prepared by the Air Conditioning Contractors of America, Manual D, Duct Design for Residential Winter and Summer Air Conditioning prepared by the Air Conditioning Contractors of America, and the Ashrae Handbook of Fundamentals for Nonresidential HVAC Systems, all as incorporated from time to time in the North Carolina State Building Code.

Statutory Authority G.S. 87-18; 87-23; 87-26.

## SECTION .1100 - FEES

### .1102 LICENSE FEES

(a) The annual license fee for statewide plumbing and heating licenses issued in the name of an individual, corporation, partnership, or business with a trade name is sixty dollars (\$60.00) seventy-five dollars (\$75.00).

(b) The annual license fee for plumbing and heating licenses limited in scope to cities or towns of less than 10,000 population and issued in the name of an individual, corporation, partnership or

business with a trade name is ~~thirty dollars~~  
(\$30.00) forty-five dollars (\$45.00).

(c) The annual license fee for an individual who is not actively engaged in the business of plumbing or heating contracting by reason of full-time employment as a local government plumbing, heating or mechanical inspector and who holds qualifications from the Code Officials Qualification Board is ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00).

(d) The initial application fee for license as a fire sprinkler contractor is seventy-five dollars (\$75.00). The annual license fee for statewide licenses issued to a fire sprinkler contractor in the name of an individual, corporation, partnership or business with a trade name is two-hundred seventy-five dollars (\$275.00).

(e) The annual license fee for an individual whose qualifications are listed as the second or subsequent individual on a corporation, partnership, or business with a trade name under Paragraphs (a), (b) or (d) of this Rule is ten dollars (\$10.00).

*Statutory Authority G.S. 87-18; 87-22.1.*

#### **.1104 FEES FOR COPIES OF RECORDS AND RETURNED CHECKS**

(a) copy of the Register of Licensees -	\$ 4.00 each
(b) copies of license -	\$15.00
(c) abstract of license record -	\$15.00
(d) processing fee for returned checks -	\$20.00
(e) <u>fee for each copy of Board rules</u> -	<u>\$10.00</u>

*Statutory Authority G.S. 87-18; 150B-19.*

\* \* \* \* \*

#### **CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Registration for Professional Engineers and Land Surveyors intends to adopt rules cited as 21 NCAC 56 .1701 - .1712.*

*The proposed effective date of this action is November 1, 1994.*

*The public hearing will be conducted at 9:00 a.m. on September 9, 1994 at 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.*

**Reason for Proposed Action:** *Set forth procedures for Continuing Professional Competency requirements for professional development, as a condition for annual registration renewal.*

**Comment Procedures:** *Persons interested may present written or oral statements relevant to the action proposed at the hearing to be held as indicated above. Written statements not presented at the hearing should be submitted to the Board's office prior to September 15, 1994.*

### **SECTION .1700 - CONTINUING PROFESSIONAL COMPETENCY**

#### **.1701 INTRODUCTION**

Every registrant shall meet the continuing professional competency requirements of these regulations for professional development as a condition for registration renewal.

*Statutory Authority G.S. 89C-10(a); 89C-17.*

#### **.1702 DEFINITIONS**

Terms used in this Section are defined as follows:

- (1) Professional Development Hour (PDH) - A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.
- (2) Continuing Education Unit (CEU) - Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in approved continuing education course.
- (3) College/Unit Semester/Quarter Hour - Credit for Accreditation Board for Engineering and Technology approved course or other related college course approved in accordance with article E of this Section.
- (4) Course/Activity - Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

(5) Dual Registrant - A person who is registered as both an engineer and a land surveyor.

(6) Sponsor - Organization or individual recognized as qualified to offer "for credit" courses. Courses offered by qualified sponsors are deemed to be acceptable for PDH credit without scrutiny of individual course content.

Statutory Authority G.S. 89C-10(a); 89C-17.

.1703 REQUIREMENTS

Every registrant is required to obtain 15 PDH units during the renewal period. If a registrant exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. Selection of qualifying courses and activities is the responsibility of the registrant. Registrants have the option of selecting courses other than those offered by approved sponsors. Post evaluation of courses offered by other than approved sponsors could result in non-acceptance. PDH units may be earned as follows:

- (1) Successful completion of college courses.
- (2) Successful completion of continuing education courses.
- (3) Successful completion of correspondence, televised, videotaped, audiotaped, and other short courses/tutorials.
- (4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences.
- (5) Teaching or instructing in Items (1) through (4) of this Rule.
- (6) Authoring published papers, articles, or books.
- (7) Active participation in professional or technical societies.
- (8) Patents.

Statutory Authority G.S. 89C-10(a); 89C-17.

.1704 UNITS

The conversion of other units of credit to PDH units is as follows:

- (1) 1 College or unit semester hour 45 PDH
- (2) 1 College or unit quarter hour 30 PDH
- (3) 1 Continuing Education Unit 10 PDH
- (4) 1 Hour of professional development in course work, seminars, or professional or

(5)	<u>technical presentations made at meetings, conventions or conferences.</u>	1 PDH
(6)	<u>For teaching apply multiple of 2*</u>	<u>10 PDH</u>
(7)	<u>Each published paper, article or book.</u>	<u>2 PDH</u>
(8)	<u>Each patent</u>	<u>10 PDH</u>

\*Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time facility.

Statutory Authority G.S. 89C-10(a); 89C-17.

.1705 DETERMINATION OF CREDIT

The Board of Registration has final authority with respect to approval of courses, sponsors, credit, PDH value for courses, and other methods of earning credit.

- (1) Credit for college or community college approved courses will be based upon course credit established by the college.
- (2) Credit for qualifying seminars and workshops, will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.
- (3) Credit determination for published papers, articles and books and obtaining patents is the responsibility of the registrant (subject to review as required by the Board.)
- (4) Credit for active participation in professional and technical societies (limited to 2 PDH per organization), requires that a licensee serve as an officer and/or actively participate in a committee of the organization. PDH credits are not earned until the end of each year of service is completed.

Statutory Authority G.S. 89C-10(a); 89C-17.

.1706 RECORDKEEPING

The responsibility of maintaining records to be used to support credits claimed is the responsibility of the registrant. Records required include, but are not limited to:

- (1) a log showing the type of activity claimed, sponsoring organization, loca-

tion, duration, instructor's or speaker's name, and PDH credits earned;

(2) attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance; or

(3) records as maintained by the National Professional Development Registry for Engineers (NPDRE). These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

Statutory Authority G.S. 89C-10(a); 89C-17.

#### .1707 EXEMPTIONS

A registrant may be exempt from the professional development educational requirements for one of the following reasons:

(1) New registrants by way of examination or reciprocity shall be exempt for their first renewal period.

(2) A registrant serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) Registrants experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4) Registrants who list their occupation as "Retired" on the board approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or land surveying, professional development hours must be earned before returning to active practice for each year exempted not to exceed the annual requirement for two years.

Statutory Authority G.S. 89C-10(a); 89C-17.

#### .1708 REINSTATEMENT

A registrant may bring an inactive license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30, then 30 shall be the maximum number required.

Statutory Authority G.S. 89C-10(a); 89C-17.

#### .1709 COMITY/OUT-OF-JURISDICTION RESIDENT

Registrants who are residents of jurisdictions other than North Carolina must meet the CPC requirements of their resident jurisdiction. The requirements for North Carolina will be deemed as satisfied when a non-resident registrant provides evidence of having met the requirements of this resident jurisdiction. If registrants reside in a jurisdiction that has no CPC requirement, the resident must meet the requirements of North Carolina.

Statutory Authority G.S. 89C-10(a); 89C-17.

#### .1710 DUAL REGISTRANTS

The number of PDH units required shall remain the same for persons who hold a second registration as engineer or land surveyor. Holders of second registration are free to utilize PDH units approved for either field at their sole discretion.

Statutory Authority G.S. 89C-10(a); 89C-17.

#### .1711 FORMS

All renewal applications will require the completion of a continuing education form specified by the board outlining PDH credit claimed. The registrant must supply sufficient detail on the form to permit audit verification, must certify and sign the continuing education form, and submit with the renewal application and fee.

Statutory Authority G.S. 89C-10(a); 89C-17.

#### .1712 COMPLIANCE

Failure to comply with the requirements of this Section shall result in non-renewal.

Statutory Authority G.S. 89C-10(a); 89C-17.

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## CHAPTER 62 - BOARD OF SANTARIAN EXAMINERS

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Sanitarian Examiners intends to amend rules cited as 21 NCAC 62 .0102 - .0104, .0201 - .0205, .0208, .0301 - .0302, .0305 - .0308, .0310, .0314 - .0317, .0319, .0402 - .0403, .0405, .0407 - .0408, .0411; adopt 21 NCAC 62 .0414; and repeal 21 NCAC 62 .0412.

**T**he proposed effective date of this action is November 1, 1994.

**T**he public hearing will be conducted at 10:00 a.m. on September 9, 1994 at the Adams Building, Human Resources Building, Dix Campus, 101 Blair Drive, Raleigh, NC 27603.

**R**eason for Proposed Action:

21 NCAC 62 .0102 & .0103 - Makes existing rule gender neutral.

21 NCAC 62 .0104 - Makes existing rule gender neutral. Increasing amount sec/treas. shall be bonded for.

21 NCAC 62 .0201 - To correct the address to which petitions are sent. To make the existing rule gender neutral. To make grammatical changes.

21 NCAC 62 .0202 - To correct the mailing address. To make the existing rule gender neutral.

21 NCAC 62 .0203 - Makes existing rule gender neutral. To make grammatical changes.

21 NCAC 62 .0204 - To make grammatical changes. To make address correction. To make existing rule gender neutral.

21 NCAC 62 .0205 - To make grammatical changes.

21 NCAC 62 .0208 - To make grammatical changes. To make address correction.

21 NCAC 62 .0301 - To make grammatical changes.

21 NCAC 62 .0302 - To make grammatical changes. To make address correction.

21 NCAC 62 .0305 - .0307 - To make grammatical changes.

21 NCAC 62 .0308 - To make existing rule gender neutral. To make grammatical corrections.

21 NCAC 62 .0310, .0314 - .0317 - To make grammatical changes.

21 NCAC 62 .0319 - To make grammatical changes. To make existing rule gender neutral.

21 NCAC 62 .0402 - To make address correction. Clarify the information which is to accompany the application.

21 NCAC 62 .0403 - Establish how often the examination is to be given. Establish clear passing scores for each section of the examination. Establish procedure for reexamination. Establish penalties for cheating.

21 NCAC 62 .0405 - Make existing rule gender neutral. Clarify due date for renewal fee. Establish a fee for returned checks.

21 NCAC 62 .0407 - To make address correction. To increase requirement for continuing education from 10 to 15 clock hours. To clarify what constitutes approved continuing education.

21 NCAC 62 .0408 - To make address correction.

21 NCAC 62 .0411 - To bring the required training courses in line with courses being taught by the Division of Health Services and the Center's for Disease Control.

21 NCAC 62 .0412 - Repeal because it repeats the General Statutes.

21 NCAC 62 .0414 - Specify arrangements to be made to insure proper guidance for a sanitarian intern by a registered sanitarian.

**C**omment Procedures: Any person interested in these rules may present oral or written comments relevant to the proposed action at the public rule-making hearing. Written statements can be submitted beginning August 15, 1994 through September 15, 1994 and must be directed to the State of Sanitarian Examiners, 2971 Shell Ave., Valdese, NC 28690

## SECTION .0100 - RULES OF ORGANIZATION

### .0102 MEETINGS

In addition to a required annual meeting in the City of Raleigh, additional meetings of the Board may be called by the Chairman chair at any designated time and place ~~he may designate~~ place.

Statutory Authority G.S. 90A-57.

### .0103 CHAIR AND VICE-CHAIR

The Chairman chair of the Board shall carry out the following duties and responsibilities:

- (1) ~~He shall call~~ call all meetings;
- (2) ~~He shall be~~ be authorized to act as the sole official spokesman representative for the Board to communications media and he may direct the secretary-treasurer or another member to impart specific information concerning official actions or policies of the Board.

Statutory Authority G.S. 90A-57.

**.0104 SECRETARY-TREASURER**

(a) The Board shall elect from among its membership a secretary who shall also serve as treasurer and be referred to as secretary-treasurer of the Board. The secretary-treasurer shall serve for a term of one year or until a successor is elected.

(b) The secretary-treasurer shall carry out the following duties and responsibilities:

- (1) ~~He shall keep~~ keep the records of the ~~Board~~ Board;
- (2) ~~He shall submit~~ submit the necessary reports as required by Chapter 93B of the General Statutes of North Carolina Carolina;
- (3) ~~He shall pay~~ pay all bills that are authorized by the ~~Board~~ Board;
- (4) ~~He shall be~~ be bonded to the amount of five fifty thousand dollars (\$5,000) (\$50,000); and
- (5) ~~He shall submit~~ submit all account books, receipts, checking accounts, etc., for an audit by a certified public accountant prior to the first meeting of the calendar year.

Statutory Authority G.S. 90A-57.

**SECTION .0200 - RULEMAKING PROCEDURES**

**.0201 PETITIONS**

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Board of Sanitarian Examiners shall address the petition to: ~~Chairman~~, Chair, Board of Sanitarian Examiners, c/o Division of Environmental Health, P.O. Box 2091, 27687, Raleigh, North Carolina 27602, 27611-7687.

(b) The petition should contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents and the statutory authority for the agency to promulgate the rule;
- (2) reason for proposal;
- (3) effect on existing rules;
- (4) any data supporting the proposal;
- (5) effect of the proposed rule on existing practices in the area involved, including cost factors;
- (6) name and address of each petitioner.

(c) The ~~chairman~~ will chair shall determine, based on a study of the facts stated in the petition,

whether the public interest will be served by granting the petition. ~~He will consider all the~~ All contents of the submitted petition, ~~plus~~ and any additional information ~~he deems relevant~~ deemed relevant, shall be considered.

(d) ~~Within 30 days of submission of the petition, the Chairman, Board of Sanitarian Examiners, will~~ The chair shall render a final decision, decision, within 30 days of submission of the petition. If the decision is to deny the petition, the ~~chairman~~ will chair shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Board of Sanitarian Examiners will shall initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these Rules.

Statutory Authority G.S. 90A-57; 150B-16.

**.0202 NOTICE**

(a) Any person or agency desiring to be placed on the mailing list for the Board of Sanitarian Examiners' rulemaking notices may file a request in writing, furnishing ~~his~~ or its the name and mailing address, with the ~~Chairman~~, Chair, Board of Sanitarian Examiners, c/o Division of Environmental Health, P.O. Box 2091, 27687, Raleigh, North Carolina 27602, 27611-7687. The request must state the subject areas within the authority of the Board of Sanitarian Examiners for which notice is requested.

(b) The Board of Sanitarian Examiners will review its mailing list periodically and may write to any person on the list to inquire whether that person wishes to remain on the list. If no response is received, that person may be removed from the list.

(c) If When practical or and appropriate, public notice of rulemaking proceedings will shall be sent to community, special interest, government, trade or professional organizations for publication.

(d) When the agency intends to adopt a rule by reference, the rulemaking notice will include, in addition to the requirements stated in G.S. 150B-12(a):

- (1) name and address of agency or organization which previously adopted the ~~material~~, material;
- (2) title and identifying number of previously adopted ~~material~~, material; and
- (3) date and edition of previously adopted material.

(e) Persons desiring information in addition to that provided in a particular rulemaking notice

may contact: Chairman, Chair, Board of Sanitarian Examiners, c/o Division of Environmental Health, P.O. Box 2091, 27687, Raleigh, North Carolina 27602. 27611-7687.

*Statutory Authority G.S. 150B-12; 90A-57.*

**.0203 HEARINGS**

(a) Any person desiring to present oral data, views, or arguments on the proposed rule must, at least five days before the hearing, file a written request with the Chairman, Chair, Board of Sanitarian Examiners, c/o Division of Environmental Health, P.O. Box 2091, 27687, Raleigh, North Carolina 27602. 27611-7687, at least five days prior to the hearing. This requirement may be waived or a failure to file a request may be excused by the presiding officer for good cause. Any person permitted to make an oral presentation is encouraged to submit a written copy of the presentation to the Chairman, Chair prior to or at the hearing.

(b) A request to make an oral presentation must contain a brief summary of the individual's views with respect to the subject matter, and a statement of the length of the time the individual intends to speak. Presentations may not exceed 10 minutes unless, upon request either before or at the hearing, the presiding officer grants an extension of time for good cause.

(c) The Chairman, Chair shall acknowledge receipt of a request to make an oral presentation and will shall inform the person making the request of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.

(d) **Written Submissions:**

- (1) Any person may file a written submission containing data, comments or arguments after publication of a rulemaking notice up to and including the day of the hearing and within five days following the hearing, unless a longer period is stated in the particular notice or an extension of time is granted for good cause following notice.
- (2) A written submission must clearly state the rule or proposed rule to which the comments are addressed and must also include the name and address of the person submitting it. Except when otherwise stated in the particular rulemaking notice, written submission must be sent to the Chairman, Chair, Board of Sanitarian Examiners, c/o Division

of Environmental Health, P.O. Box 2091, 27687, Raleigh, North Carolina 27602. 27611-7687.

(3) The Chairman, Chair shall acknowledge receipt of all written submissions.

(e) The presiding officer at the hearing shall have complete control of the proceedings, including:

- (1) the responsibility of having a record made of the proceedings, proceedings;
- (2) extension of any time allowments, allotments;
- (3) recognition of speakers, speakers;
- (4) elimination of repetitive presentations, presentations;
- (5) direction of the flow of the discussion, discussion; and
- (6) general management of the hearing.

(f) The presiding officer shall insure that each person participating in the hearing is given a fair opportunity to present views, data and comments.

*Statutory Authority G.S. 90A-57; 150B-12.*

**.0204 JUSTIFICATION OF RULEMAKING DECISION**

(a) Any interested person, either prior to adoption or within 30 days thereafter, who desires a concise A statement of the principal reasons for and against the adoption of a rule by the Board of Sanitarian Examiners and the factors that led to overruling the considerations urged against its adoption shall be made available to requesting parties, may submit a request to the Chairman, Board of Sanitarian Examiners, P.O. Box 2091, Raleigh, North Carolina 27602.

- (1) (b) The request must be made in writing, writing and submitted to the Chairman, Board of Sanitarian Examiners, c/o Division of Environmental Health, P.O. Box 27687, Raleigh, North Carolina 27611-7687, prior to adoption or 30 days thereafter.
- (2) (c) The Chairman, Chair shall make a written answer to the request.

*Statutory Authority G.S. 90A-57; 150B-12.*

**.0205 RECORD OF RULEMAKING PROCEEDINGS**

A record of all rulemaking proceedings including any petitions received by the Board of Sanitarian Examiners will shall be maintained for three years. This record will shall include:

- (1) the original petition; petition;

- (2) the notice, notice;
- (3) all written memoranda and information submitted, submitted;
- (4) a record of the oral hearing, hearing;
- (5) any reasons for or against adoption of the rule, rule; and
- (6) a final draft of the rule.

It ~~will~~ shall be maintained in a file in by the chairman's office, P.O. Box 2091, Raleigh, North Carolina 27602, and will be available for public inspection during regular office hours. chair, Board of Sanitarian Examiners.

Statutory Authority G.S. 90A-12; 150B-12.

#### .0208 DECLARATORY RULINGS

(a) The Board of Sanitarian Examiners shall have the power to make issue declaratory rulings. All requests for declaratory rulings shall be written and submitted to the Chairman, Board of Sanitarian Examiners, P.O. Box 2091, Raleigh, North Carolina 27602.

(b) All requests for a declaratory ruling shall be in writing and submitted to the Chair, Board of Sanitarian Examiners, c/o Division of Environmental Health, P.O. Box 27687, Raleigh, North Carolina 27611-7687 and must include the following information:

- (1) name and address of petitioners;
- (2) statute or rule to which petition relates;
- (3) ~~ene~~se statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him; and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Whenever the Board of Sanitarian Examiners believes for good cause that issuance of a declaratory ruling is undesirable, it may refuse to issue one. ~~When good cause not to issue a ruling is deemed to exist, the chairman will~~ The chair shall notify the petitioner of his the decision in writing stating reasons for the denial of the request.

(d) ~~Where When~~ a declaratory ruling is deemed appropriate, made, the Board of Sanitarian Examiners will issue the ruling within 60 days of receipt of the petition. request.

(e) A record of all declaratory ruling proceedings ~~will~~ shall be maintained for three years. This record ~~will~~ shall contain:

- (1) the original request, request;
- (2) all written memoranda and information submitted, submitted; and

- (3) either the declaratory ruling or a statement of the reasons for denying the request.

This record ~~will~~ shall be maintained in a file at the office of the Head of the Environmental Health Section, Division of Health Services, 1330 St. Mary's Street, Raleigh, North Carolina, and will be available for public inspection during regular office hours. by the chair, Board of Sanitarian Examiners.

Statutory Authority G.S. 90A-57; 150B-17.

#### SECTION .0300 - CONTESTED CASES

##### .0301 OPPORTUNITY FOR AN ADMINISTRATIVE HEARING

(a) Upon request, an administrative hearing will be held prior to final action on a matter by the Board of Sanitarian Examiners if the action will affect a right, privilege or benefit already enjoyed by a specific party party, unless the action is taken in an emergency situation.

(b) ~~Whenever When~~ the Board of Sanitarian Examiners takes an action which affects a right, privilege or duty of a specific party, it will notify the party in writing of that party's right to an administrative hearing on the matter.

Statutory Authority G.S. 150B-3; 150B-38.

##### .0302 REQUEST FOR A HEARING

(a) ~~Before a hearing request may be made, it is recommended that a person first make reasonable efforts to resolve the problem with the Board of Sanitarian Examiners informally. Inquiries or complaints should be directed to the person in charge of the program, institution, facility, office or agency with which the complainant is dealing.~~

(b) ~~(a) Following attempts to resolve issues informally, if still dissatisfied, the person may file a~~ A written request for a hearing may be filed with the Chairman, Chair, Board of Sanitarian Examiners, c/o Division of Environmental Health, P.O. Box 2091, 27687, Raleigh, North Carolina 27602. 27611-7687.

(c) (b) Such request must contain the following information:

- (1) the name and address of petitioner, petitioner;
- (2) a ~~ene~~se statement of the agency action being challenged, challenged; and

- (3) a concise statement of the way in which the petitioner has been aggrieved, and aggrieved.
- (4) a clear and specific demand for a hearing.

(d) (c) Such requests ~~will~~ shall be promptly acknowledged and a hearing ~~scheduled~~ promptly scheduled.

Statutory Authority G.S. 150B-38.

#### .0305 NOTICE

(a) In determining the period between notice and hearing all pertinent factors will be considered which may include:

- (1) the complexity of the issues involved;
- (2) the number of parties;
- (3) the probable length of the presentation at the hearing;
- (4) the probable success of notifying all parties without resorting to publication;
- (5) the probability of prehearing motions and subpoenas, and
- (6) any other factors likely to affect the hearing.

(b) In addition to the requirements specified in G.S. 150B-38(b), the notice~~s~~ notice shall:

- (1) shall give the name, title, address, and phone number of the person in the Board of Sanitarian Examiners to contact for further information or discussion;
- (2) shall include a statement that failure to appear at the hearing may result in the decision on the case being made in the party's absence; and
- (3) may give notice of the date and place for the prehearing conference, if any.

Statutory Authority G.S. 150B-38.

#### .0306 INTERVENTION

(a) A motion to intervene of right, ~~shall~~ be granted in accordance with as provided in G.S. 1A-1, Rule 24, ~~24~~, will be granted, if timely, and the movant meets the criteria of that rule. A motion will be considered timely if a grant would not cause substantial prejudice to the rights of the parties, substantial added expense, or serious inconvenience to the parties.

(b) A petition to intervene permissively, as provided in G.S. 1A-1, Rule 24, will be granted, if timely under Subsection (a) of this Rule, when the movant meets the criteria of that rule and the Board of Sanitarian Examiners determines that:

- (1) There is sufficient legal or factual similarity between the petitioner's asserted rights, privileges, or duties and those of the parties to the hearing; and
- (2) Permitting participation by the petitioner would not unduly burden the hearing.

(c) Discretionary intervention will be allowed upon timely petition, which in no case will be after termination of the hearing itself, when deemed advisable to do so by the Board of Sanitarian Examiners. Intervention will be deemed advisable when:

- (1) The information the petitioner desires to present is relevant and not repetitious or merely cumulative; and
- (2) Permitting intervention by the petitioner as a party would aid the disposition of the matter.

(d) The petition for discretionary intervention must include the following information:

- (1) a citation to any statutory or non-statutory grounds for intervention; if none, the petition should so indicate;
- (2) a statement of the claim or defense in respect of which intervention is sought;
- (3) name and address of petitioner;
- (4) full identification of the hearing in which petitioner is seeking to intervene; and
- (5) a summary of the arguments or evidence petitioner seeks to present.

(e) (b) If the Board of Sanitarian Examiners determines to allow intervention, notification of that decision ~~will~~ shall be issued promptly to all parties and to the movant or petitioner. In cases of discretionary intervention notification ~~will~~ shall include a statement of the limitations, if any, of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.

(f) (c) If the Board of Sanitarian Examiners' decision is to deny intervention, the movant or petitioner ~~will~~ shall be notified promptly. Such notice ~~will~~ shall state all reasons for the decision and ~~will~~ shall be issued to all parties parties, as well as to the movant or petitioner.

Statutory Authority G.S. 150B-38.

#### .0307 CHANGE OF VENUE

(a) Any party may move for a change of venue by filing a motion with the hearing officer at least five days before the hearing. The motion must contain:

- (1) the party's name and address; address;
- (2) identification of the contested case and the scheduled hearing; hearing;
- (3) the county in which the party requests that the hearing be held; held; and
- (4) a concise statement of the reasons for a change of venue.

(b) The presiding officer ~~will~~ shall consider the motion and promptly notify the movant of the decision, including the reasons for the decision. If the motion is approved, the presiding officer ~~will~~ shall issue notice of change of venue to all other parties.

*Statutory Authority G.S. 150B-38; 150B-40.*

#### **.0308 DISQUALIFICATION OF BOARD MEMBERS**

(a) If for any reason the presiding officer or a member of the body participating in the hearing determines that personal bias or other factors would prevent him from conducting the hearing and performing all duties in an impartial manner, he the person shall submit, in writing to the Chairman; chair, Board of Sanitarian Examiners, his the disqualifications and the reasons therefor.

(b) If for any reason any party in a contested case believes that the presiding officer or a member of the body conducting the hearing is personally biased or otherwise unable to conduct the hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Chairman; chair, Board of Sanitarian Examiners, which states all facts the party deems relevant to the disqualification of the allegedly biased person.

(c) An affidavit of disqualification ~~will~~ shall be considered timely if filed before commencement of the hearing. Any other affidavit will be deemed timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief the person may be disqualified under this Rule.

##### **(d) Disqualification by Board**

- (1) The Board of Sanitarian Examiners shall decide whether to disqualify the person.
- (2) The persons whose disqualification is to be determined, will not participate in the decision but may be called on to furnish information to the Board.
- (3) The Board shall appoint a member of the Board to investigate the allegations of the affidavit.

(4) The investigator will report the findings and recommendations to the Board who will then decide whether to disqualify the challenged individual.

(e) When, by reason of personal bias, the presiding officer or hearing body is disqualified after the hearing has begun, the case will continue unless it is shown that substantial prejudice will result therefrom.

(f) When, for reasons other than personal interest, a presiding officer is disqualified or otherwise is unable to continue the hearing, the Board shall appoint another presiding officer and the hearing will be resumed ~~except~~ except when:

- (1) When oral testimony has already been given, and it is determined by the successor presiding officer that the viewing of the witness is an important element of the case, in which case that portion of the testimony and evidence will be repeated; and
- (2) When continuation of the hearing would result in substantial prejudice to the rights of the parties.

(g) The determination of whether resuming and continuing the case will result in substantial prejudice is to be made by the remaining members of the Board of Sanitarian Examiners.

(h) Determinations of disqualification, discontinuation of the hearing, rehearing of a portion or all of a contested case, or dismissal of a case without prejudice, together with a statement of reasons will be part of the record of the case and will be communicated to all ~~parties~~ promptly ~~parties~~.

*Statutory Authority G.S. 150B-38.*

#### **.0310 CONTINUANCES**

A continuance ~~will~~ may be granted to a party ~~only in compelling circumstances especially when one such disposition has been previously requested by and granted to the party~~ circumstances.

*Statutory Authority G.S. 150B-38; 150B-40.*

#### **.0314 PRE-HEARING CONFERENCE**

(a) The conference ~~will~~ shall be informal in nature.

(b) The conference ~~will~~ shall be noted in the notice of hearing or in a subsequent notice if a conference is later determined to be necessary by the presiding officer.

(c) The purposes of this conference ~~will~~ shall be to discuss:

- (1) the possibility of simplification of issues, issues;
- (2) stipulation of facts or findings, findings;
- (3) identification of areas where evidence will be needed, is needed;
- (4) indication of discovery or subpoenas needed, needed;
- (5) the need for consolidation of cases or joint hearings, hearings; and
- (6) any other matters which will may reduce costs or costs, save time or otherwise aid expeditious disposition of the contested case.

*Statutory Authority G.S. 150B-38; 150B-40.*

**.0315 SIMPLIFICATION OF ISSUES**

In a contested case, the Board of Sanitarian Examiners and the other parties may agree in advance to simplify the hearing by:

- (1) eliminating issues to be contested at the hearing, hearing;
- (2) accepting the validity of certain proposed evidence, evidence;
- (3) accepting the findings in some other case with relevance to the case at hand, hand; or
- (4) agreeing to such other matters as may expedite the hearing.

*Statutory Authority G.S. 90A-4; 150B-38.*

**.0316 SUBPOENAS**

(a) Subpoenas requiring the attendance of witnesses or those to produce documents or evidence will shall be issued promptly by the presiding officer after upon receipt of a request from a party to the case for such a subpoena.

(b) A request for a subpoena shall include:

- (1) the name and address of the person requesting the subpoena;
- (2) full identification of the hearing to which the witness or evidence is to be subpoenaed;
- (3) name and address of the person(s) whose appearance is sought;
- (4) specific identification, including a detailed description, and specific designation of present location of any documents, evidence, or things sought, including the name and address of those in possession of the items sought; and the reasons the person, documents, or evidence should be compelled to attend the hearing, including a statement of
- (5)

the relevance and significance of the person, documents, or evidence to the case.

(c) Any objection to the subpoena shall be served on the party who requested the subpoena at the same time it is filed with the Board of Sanitarian Examiners.

(d) The party requesting the subpoena, in such time as may be granted by the presiding officer, may file a written response to the objection. The response shall be served in like manner as the objection.

(e) After receipt of the objection and any response, the presiding officer shall issue a notice to the person requesting and the person challenging the subpoena and may notify all other parties of an open hearing to be scheduled as soon as practicable at which evidence and testimony may be presented limited to the questions raised by the objection and any response.

(f) ~~Promptly after~~ After the close of such hearing, the Board members hearing the case will shall rule on the challenge and issue a written decision. A copy of this decision will be issued to all parties and be made a part of the record.

*Statutory Authority G.S. 150B-38; 150B-39.*

**.0317 TRANSCRIPTS**

(a) ~~A party who wants Requests for a transcript of a hearing hearing, in part or part in whole, shall be made to of a hearing should contact the Chairman, Chair, Board of Sanitarian Examiners, c/o Division of Environmental Health, P.O. Box 2091, 27687, Raleigh, North Carolina 27602-27611-7687.~~

(b) The party requesting the transcript shall bear the cost of the transcript or part thereof.

*Statutory Authority G.S. 150B-38; 150B-42(c).*

**.0319 RECORD OF CONTESTED CASES**

An official record of all administrative hearings will shall be maintained for ten years. The record will shall be maintained in a file by the ~~Secretary Treasurer whose name, address and telephone number can be obtained by contacting the office of the Head of the Environmental Health Section, Division of Health Services, 1330 St. Mary's Street, Raleigh, North Carolina, (telephone 919/733-2884) and will be available for public inspection during regular office hours. chair, Board of Sanitarian Examiners.~~

*Statutory Authority G.S. 150B-38; 150B-42(c).*

SECTION .0400 - RULES  
OF OPERATION

.0402 APPLICATIONS

(a) Applications for registration as a sanitarian or sanitarian intern must be filed with the Board on a form provided by the Board and available from the secretary-treasurer of the Board or from the Division of Health Services, Environmental Health, P.O. Box 2091, 27687, Raleigh, NC 27602, 27611-7687.

(b) The application form shall be signed by the applicant and shall contain biographical data on the applicant including education, experience, duties, prior registration and related matters as specified by the Board to determine the applicant's qualifications for registration. The application shall also be accompanied by a certified transcript from the educational institution from which the applicant has received a degree, following:

- (1) a certified transcript sent directly to the Board from the educational institutional from which the applicant has received a degree;
- (2) certified transcripts from all other educational institutions from which the applicant has earned science credits used to comply with G.S. 90A-53;
- (3) an official job description signed by the applicant's supervisor; and
- (4) the registered sanitarian's statement as described in Rule .0414 of this Chapter.

Statutory Authority G.S. 90A-53; 90A-57.

.0403 EXAMINATION

(a) The Board shall administer an examination three times annually, at a time and location designated by the Board. An applicant for a certificate as a registered sanitarian shall pass an the examination which consists of the following:

- (1) An an objective written examination, designed to test the applicant's competence in the subject of environmental health sanitation, administered semi-annually by the Board at a time and location authorized by the Board; health;
- (2) An an oral examination administered prepared and evaluated by the Board; and
- (3) A a written question prepared and evaluated by the Board and administered by the Board. Board.

(b) Every applicant shall be required to pass the examination with a grade of at least 70 percent, percent, with the objective written examination to count 50 percent of the total score, the oral examination to count 25 percent of the total score, and the written question to count 25 percent of the total score. An applicant must score a minimum of 60 percent on each individual portion of the examination.

(c) An applicant retaking the examination must retake all three portions, unless a written request is made to the Board to only retake 1 or 2 portions. This request must be received by the Board prior to the cutoff date for registration for the examination.

(d) Applicants shall not cheat or attempt to cheat on the examination by any means, including giving or receiving assistance, and shall not communicate in any manner with any person during the examination, other than the person(s) administering the examination. Violation of this rule shall be cause for dismissal from the examination, invalidation of the examination score, and revocation or denial of registration.

Statutory Authority G.S. 90A-53; 90A-57.

.0405 AUTHORIZED EXPENDITURES  
AND FEES

(a) Individual Board members are not authorized to incur expenses nor financially obligate the Board without prior notification and permission of the secretary-treasurer or chairman. chair.

(b) The following fees shall apply:

- (1) Application application for sanitarian intern--\$35.00;
- (2) Examination examination--Current current cost of the Professional Examination Service's registered sanitarian exam;
- (3) Registration registration by reciprocity--\$35.00; and
- (4) Annual annual renewal--\$20.00. \$35.00.

(c) Applications for registration, renewal, and examinations shall be accompanied by the payment of appropriate fees set by the Board.

(d) An additional fee of five dollars (\$5.00) shall be charged for each late renewal received postmarked after January 1 December 31 of each year.

(e) An additional fee of twenty dollars (\$20.00) shall be charged for all returned checks.

Statutory Authority G.S. 90A-53; 90A-54; 90A-57; 90A-62; 90A-63.

**.0407 RENEWAL**

(a) Applications for renewal must be filed with the Board on a form provided by the Board and available from the secretary-treasurer or from the Division of Health Services, Environmental Health, P.O. Box 2091, 27687, Raleigh, NC 27602. 27611-7687.

(b) The renewal application must be completed and signed by the applicant.

(c) Renewal fees must be received annually not later than December 31. The secretary-treasurer shall notify each registered sanitarian and registered sanitarian intern of the December 31 expiration date of registration and shall send a renewal application form to the last current mailing address for each sanitarian and intern on or before December 1 of each year.

(d) Registered sanitarians or sanitarian interns who fail to renew by December 31 shall be notified by the secretary-treasurer that their registration has expired and that they may not practice as a sanitarian until reinstated by paying the required renewal fee plus a late fee as specified in these rules.

(e) Sanitarian interns must renew temporary certificates annually by submitting a renewal application no later than December 31 and the required renewal fee.

(f) Registered Sanitarians sanitarians or registered sanitarian interns shall successfully complete the following specified a minimum of 15 instructional clock hours of continuing education requirements for renewal: acceptable to the Board each year. Continuing education acceptable to the Board includes:

(1) A bachelor's or master's graduate of an accredited environmental health program must complete within two years of employment, the NC State University Food Protection short course or one soils workshop approved by the Board; specialized training courses required in Rule .0411 of this Chapter;

(2) The CDC Homestudy Course 3013-G, "Insect and Rodent Control", during the first three years following employment. Successful completion of the CDC Homestudy Course 3013-G prior to employment or completion of an equivalent course offered by an environmental health degree program accredited by the National Accreditation Council of

Environmental Health Curricula meets the requirements for CDC Homestudy Course 3013-G; District Environmental Health Section Educational meetings;

(3) A public health law course during the first four years following employment; and professional association courses and educational meetings;

(4) After four years of employment, ten instructional clock hours of continuing education acceptable to the Board includes attendance at district meetings; satisfactory completion of a seminar or short course; successful completion of a course offered by an accredited college or university; or successful completion of any one of the following CDC Homestudy Courses:

3011-G, "Basic Mathematics in Environmental Health";  
3012-G, "Communicable Disease Control";  
3014-G, "Waterborne Disease Control";  
3015-G, "Environmental Protection";  
3016-G, "Foodborne Disease Control";  
3017-G, "Water Fluoridation";  
3018-G, "Microbial Ecology of Foods";  
3030-G, "Principles of Epidemiology".

Each of the CDC Homestudy Courses may be used only one time to satisfy the ten clock hours of continuing education requirements. Documentation of successful completion of any one of the CDC Homestudy Courses will satisfy the continuing education requirements for the calendar year in which the course is completed. seminars or short courses offered by the North Carolina State of Practice Committee;

(5) successful completion of a job related course offered by an accredited college or university, with the hours credited for the year that the course is successfully completed;

(6) successful completion of a job related course offered by the Centers for Disease Control and Prevention, the Food and Drug Administration, or the Environmental Protection Agency; and

(7) other training for which approval has been granted by the Board.

(g) Registrations that have expired may be renewed within 12 months after expiration upon submittal of proper application and payment of the appropriate renewal fee, plus the late fee, as applicable. Registrations that have expired for more than 12 months, but not more than 36 months, may be considered for renewal upon submittal of proper application and payment of the appropriate renewal fee plus the late fee for each year since the expiration. The applicant shall provide verification to the board that adequate continuing education clock hours have been obtained during each year since the expiration to comply with the requirements of this Section. Registrations that have expired for more than 36 months may not be renewed.

(h) Interns that are no longer employed in the field of environmental health in North Carolina may not renew.

Statutory Authority G.S. 90A-57; 90A-63.

#### .0408 PUBLIC INSPECTION

A copy of these rules is available for public inspection in the office of the Head of the Division of Environmental Health Section, Division of Health Services, Health, 1330 St. Mary's Street, Raleigh, North Carolina.

Statutory Authority G.S. 90A-57.

#### .0411 SPECIALIZED TRAINING

(a) An Every applicant for registration who is a graduate of a bachelor's or master's degree program accredited by the National Accreditation Council for Environmental Health Curricula shall successfully complete either Sub-items (1)(a) through (e) or Sub-items (2)(a) through (b) of the following:

(1) Track I:

(a) (1) Orientation and initial field training as soon as possible after employment as a sanitarian intern, but in no case later than 90 days after employment; orientation and initial field training must be completed at one of the Division of Environmental Health Services' recognized orientation and initial field training centers; and

(b) (2) The Center Centers for Disease Control (CDC) Homestudy Course 3010-G, "Environmental Science", or its equivalent; equivalent, successful

Successful completion of the CDC Homestudy Course 3010-G or its equivalent prior to employment or graduation from an environmental health degree program accredited by the National Accreditation Council for Environmental Health Curricula Environmental Health Science and Protection Accreditation Council meets the requirements of this Rule. Rule; and

(b) An applicant for registration who is a graduate of a bachelor's program with a minimum of 15 semester hours science shall successfully complete the following:

(1) Requirements in (1) and (2) in Rule .0411 (a); and

(c) (2) The Either the NC State University Food Protection Short course or one basic soils workshop approved by the Board. Board within the first 2 years following employment; and

(d) The CDC Homestudy course 3013-G, "Vectorborne Disease Control" during first three years following employment. Successful completion of the CDC Homestudy course 3013-G prior to employment, or completion of an equivalent course offered by an environmental health degree program accredited by the National Environmental Health Science and Protection Accreditation Council meets the requirements of this Rule; and

(e) A public health law course during the first 4 years following employment.

(2) Track II:

(a) Orientation and Initial Internship Training for Environmental Health Interns sponsored by the Division of Environmental Health at the centralized training site as soon as practical, but in no case more than nine months following registration as a sanitarian intern; and

(b) A public health law course during the first four years following employment.

Statutory Authority G.S. 90A-53; 90A-57.

#### .0412 EXPERIENCE

An applicant for a certificate as a registered sanitarian shall have at least two years experience in the field of environmental health sanitation, or at least one year of such experience in the field of

~~environmental health sanitation and one year of graduate study in the sanitary sciences.~~

*Statutory Authority G.S. 90A-53; 90A-57.*

**.0414 SANITARIAN INTERN**

Every applicant for registration as a sanitarian intern must be under the guidance of a registered sanitarian as defined in G.S. 90A. For those places of employment that do not have another registered sanitarian on staff arrangements must be approved by the Board prior to registration to assure that guidance by a registered sanitarian is provided. A statement shall be filed with the Board indicating that the registered sanitarian providing guidance will instruct and guide the intern applicant in the performance of all environmental health duties. This statement will indicate the date in which the registered sanitarian providing guidance assumes responsibility and the signatures of both the registered sanitarian and the applicant.

*Statutory Authority G.S. 90A-54; 90A-63.*

# LIST OF RULES CODIFIED

**T**he List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

## Key:

<i>Citation</i>	= <i>Title, Chapter, Subchapter and Rule(s)</i>
<i>AD</i>	= <i>Adopt</i>
<i>AM</i>	= <i>Amend</i>
<i>RP</i>	= <i>Repeal</i>
<i>With Chgs</i>	= <i>Final text differs from proposed text</i>
<i>Corr</i>	= <i>Typographical errors or changes that requires no rulemaking</i>
<i>Eff. Date</i>	= <i>Date rule becomes effective</i>
<i>Temp. Expires</i>	= <i>Rule was filed as a temporary rule and expires on this date or 180 days</i>

## NORTH CAROLINA ADMINISTRATIVE CODE

JULY 94

TITLE	DEPARTMENT	TITLE	DEPARTMENT
10	Human Resources	15A	Environment, Health, and Natural Resources
11	Insurance	19A	Transportation
12	Justice	21	Occupational Licensing Boards
13	Labor		1 - Acupuncture
14A	Crime Control and Public Safety		36 - Nursing

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC 3D .0913		✓		✓		08/01/94	
	.1001		✓		✓		08/01/94	
	3M .0202 - .0203		✓		✓		08/01/94	
	.0205		✓		✓		08/01/94	
	.0207		✓		✓		08/01/94	
	3U .0713					✓		
41I	.0101		✓				09/01/94	
	.0103		✓		✓		09/01/94	
	.0304		✓				09/01/94	
	.0305 - .0306		✓		✓		09/01/94	
	.0308		✓				09/01/94	
	.0312		✓				09/01/94	
	.0401		✓		✓		09/01/94	

**LIST OF RULES CODIFIED**

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC 41I .0402 - .0405			✓			09/01/94	
	.0406			✓			09/01/94	
	.0407 - .0409			✓			09/01/94	
	.0410			✓	✓		09/01/94	
	.0411			✓			09/01/94	
	41J .0501	✓			✓		08/02/94	
	43L .0206 - .0209	✓			✓		09/01/94	
	46C .0106			✓	✓		08/01/94	
11	NCAC 6A .0802			✓	✓		08/01/94	
12	NCAC 4E .0402			✓	✓		08/01/94	
	9B .0101			✓			01/01/95	
	.0203			✓	✓		01/01/95	
	.0205			✓	✓		01/01/95	
	.0209			✓	✓		01/01/95	
	.0223			✓			01/01/95	
	.0231			✓			01/01/95	
	.0312			✓			01/01/95	
	.0401			✓			01/01/95	
	.0410			✓			01/01/95	
	.0413			✓			01/01/95	
	9C .0215			✓			01/01/95	
	.0307			✓			01/01/95	
	.0601			✓	✓		01/01/95	
	.0603			✓	✓		01/01/95	
	.0604			✓			01/01/95	
	9E .0103			✓			01/01/95	
13	NCAC 6 .0305			✓	✓		08/01/94	
	.0402			✓	✓		08/01/94	
	.0501			✓			08/01/94	
	.0505				✓		08/01/94	
	.0510			✓			08/01/94	
	.0511 - .0512				✓		08/01/94	
	.0515 - .0516			✓		✓	08/01/94	

**LIST OF RULES CODIFIED**

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
13	NCAC 6 .0519		✓				08/01/94	
	.0520			✓			08/01/94	
	.0521 - .0522		✓		✓		08/01/94	
	.0525 - .0526		✓		✓		08/01/94	
7F	.0101		✓		✓		08/01/94	
	.0101		✓				09/01/94	
	.0201		✓		✓		08/01/94	
	.0301		✓		✓		08/01/94	
	.0501 - .0502		✓		✓		08/01/94	
14A	NCAC 9A .0001			✓			08/01/94	
	9H .0101			✓			08/01/94	
	.0103 - .0105			✓			08/01/94	
	.0201		✓		✓		08/01/94	
	.0301 - .0303			✓			08/01/94	
	.0304	✓					08/01/94	
	.0305	✓			✓		08/01/94	
	.0306	✓					08/01/94	
	.0307	✓			✓		08/01/94	
	.0401 - .0402			✓			08/01/94	
	.0501 - .0504			✓			08/01/94	
	.0601 - .0605			✓			08/01/94	
	.0701		✓				08/01/94	
	.0703 - .0704		✓				08/01/94	
	.0801 - .0805		✓				08/01/94	
	.0901 - .0905		✓				08/01/94	
	.1001 - .1003		✓				08/01/94	
15A	NCAC 1J .0701		✓		✓		08/01/94	
	2B .0303		✓		✓		08/01/94	
	2D .0524					✓		
	.0601					✓		
	.0907					✓		
	.0928					✓		
	.0933					✓		

**LIST OF RULES CODIFIED**

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC 2Q .0102					✓		
						✓		
						✓		
						✓		
						✓		
						✓		
						✓		
						✓		
19A	NCAC 3B .0703			✓	✓		08/01/94	
	.0704			✓			08/01/94	
31	.0501			✓	✓		08/01/94	
3J	.0401			✓	✓		08/01/94	
	.0501			✓	✓		08/01/94	
21	NCAC 1 .0101 - .0103	✓			✓		08/01/94	
	36 .0226			✓			07/25/94	180 DAYS

**T**he Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

**COMMERCE****Energy***4 NCAC 12C .0007- Institutional Conservation Program**RRC Objection 06/16/94***ENVIRONMENT, HEALTH, AND NATURAL RESOURCES****Departmental Rules***15A NCAC 1J .0303 - Filing of Required Supplemental Information**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare**RRC Objection 06/16/94**Agency Revised Rule**RRC Objection 06/16/94**15A NCAC 1L .0302 - General Provisions**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 1L .0602 - Public Health Need**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94***Environmental Health***15A NCAC 18A .2610 - Storage: Handling: and Display of Food**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18A .2645 - Requirements for Limited Food Service Establishments**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0202 - Removal of Dissolved Matter and Suspended Matter**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0203 - Public Well Water Supplies**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0402 - Water Supply Wells**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0403 - Surface Water Facilities**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0404 - Water Treatment Facilities**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0405 - Storage of Finished Water**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0710 - Other Water Treatment Plants**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0711 - Alternative Filtration Treatment Technologies**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0714 - Pilot Plant Studies**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0802 - Capacities: Determining Peak Demand**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0803 - Capacities: Determining Total Volume**RRC Objection 06/16/94**Agency Revised Rule**Obj. Removed 06/16/94**15A NCAC 18C .0805 - Capacities: Elevated Storage**RRC Objection 06/16/94*

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 18C .1002 - Disinfection of Wells</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 18C .1004 - Disinfection of Filters</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 18C .1102 - Authorized Persons Within Watershed Area</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 18C .1209 - Untreated Domestic Sewage or Industrial Wastes</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 18C .1406 - Control of Treatment Process</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 18C .1511 - Concentration of Iron</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 18C .1512 - Concentration of Manganese</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 18C .1533 - Total Trihalomethanes Sampling/Analysis: &lt; 10,000</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94

**Environmental Management**

<i>15A NCAC 2D .0101 - Definitions</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 2D .0932 - Gasoline Truck Tanks and Vapor Collection Systems</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94

**Wildlife Resources and Water Safety**

<i>15A NCAC 10D .0002 - General Regulations Regarding Use</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>15A NCAC 10H .0101 - License to Operate</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94

**HUMAN RESOURCES****Facility Services**

<i>10 NCAC 3E .0201 - Building Code Requirements</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>10 NCAC 3E .0206 - Elements and Equipment</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>10 NCAC 3R .4206 - Accessibility</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>10 NCAC 3U .0713 - Staff/Child Ratios for Medium and Large Centers</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94

**Mental Health, Developmental Disabilities and Substance Abuse Services**

<i>10 NCAC 45G .0139 - Security Requirements Generally</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94

**Mental Health: General**

<i>10 NCAC 14C .1148 - Thomas S. Community Services</i>	<i>RRC Objection</i>	06/16/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94

**Mental Health: MR Centers**

<i>10 NCAC 16A .0402 - Explanation of Terms</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>06/16/94</i>
<i>10 NCAC 16A .0403 - Designation Procedures</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/16/94</i>

**INDEPENDENT AGENCIES****State Health Plan Purchasing Alliance Board**

<i>24 NCAC 5 .0302 - Designation Process</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>06/16/94</i>
	<i>Obj. Removed</i>	<i>06/16/94</i>

**INSURANCE****Multiple Employer Welfare Arrangements**

<i>11 NCAC 18 .0019 - "Qualified Actuary"; Maximum Net Retention Filing</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>06/16/94</i>
<i>11 NCAC 18 .0021 - Certification of Reserves Filing</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/16/94</i>

**JUSTICE****Criminal Justice Education and Training Standards**

<i>12 NCAC 9B .0208 - Basic Training -- Probation/Parole Officers</i>	<i>RRC Objection</i>	<i>07/14/94</i>
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**Private Protective Services**

<i>12 NCAC 7D .1101 - Definitions</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/16/94</i>
<i>12 NCAC 7D .1104 - Training and Supervision Required in Level Three</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>06/16/94</i>

**LICENSING BOARDS AND COMMISSIONS****Board of Nursing**

<i>21 NCAC 36 .0211 - Examination</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/16/94</i>
<i>21 NCAC 36 .0218 - Licensure Without Examination (By Endorsement)</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>06/16/94</i>

**Professional Counselors**

<i>21 NCAC 53 .0103 - Purpose of Organization</i> <i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>06/16/94</i>
<i>21 NCAC 53 .0104 - Organization of the Board</i> <i>Agency Repealed Rule</i>	<i>RRC Objection</i>	<i>06/16/94</i>
<i>21 NCAC 53 .0201 - Supervision</i> <i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>06/16/94</i>
<i>21 NCAC 53 .0303 - Work Experiences</i> <i>Agency Repealed Rule</i>	<i>RRC Objection</i>	<i>06/16/94</i>
	<i>Obj. Removed</i>	<i>06/16/94</i>

## RRC OBJECTIONS

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<i>21 NCAC 53 .0305 - Exemption from Academic Qualification</i>			
<i>    Rule Withdrawn by Agency</i>			06/16/94
<i>21 NCAC 53 .0503 - Renewal Fee</i>	<i>RRC Objection</i>	06/16/94	
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94	

### REVENUE

#### Sales and Use Tax

<i>17 NCAC 7B .2608 - Plumbing: Heating: Air Cond/Elec Contractors: Purchases</i>	<i>RRC Objection</i>	05/19/94
<i>    Rule Returned to Agency</i>		06/16/94
<i>17 NCAC 7B .2609 - Plumbing: Heating: Air Cond/Elec Contractors: Sales</i>	<i>RRC Objection</i>	05/19/94
<i>    Rule Returned to Agency</i>		06/16/94
<i>17 NCAC 7B .5462 - White Goods Disposal Tax Report Form: E-500W</i>	<i>RRC Objection</i>	05/19/94
<i>    Rule Returned to Agency</i>		06/16/94
<i>17 NCAC 7B .5464 - Ice Certificate Form: E-599Y</i>	<i>RRC Objection</i>	05/19/94
<i>    Rule Returned to Agency</i>		06/16/94

### TRANSPORTATION

#### Division of Motor Vehicles

<i>19A NCAC 3I .0307 - Courses of Instruction</i>	<i>RRC Objection</i>	06/16/94
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	06/16/94
<i>19A NCAC 3I .0501 - Requirements</i>		06/16/94
<i>    Rule Withdrawn by Agency</i>		

# CONTESTED CASE DECISIONS

**This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.**

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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## ADMINISTRATION

### *North Carolina Council for Women*

Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94
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## ALCOHOLIC BEVERAGE CONTROL COMMISSION

Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94

## COMMERCE

### *Savings Institutions Division*

James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94
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## CORRECTION

### *Division of Prisons*

Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94
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## CRIME CONTROL AND PUBLIC SAFETY

Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94
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### *Crime Victims Compensation Commission*

James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
Kathryn A. Whitley v. Macon County Health Department	94 EHR 0088	West	07/13/94	
Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res.	94 EHR 0210	Chess	06/21/94	
Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	

### *Coastal Management*

Roger Fuller v. EHNR, Div. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378 <sup>2</sup>	Gray	04/07/94	
Roger Fuller v. EHNR, Div. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017 <sup>2</sup>	Gray	04/07/94	
Gary E. Montalbene v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Paley-Midgett Partnership v. Coastal Resources Commission	94 EHR 0315	Gray	06/01/94	

### *Environmental Health*

Jane C. O'Malley, Melvin L. Cartwright v. EHNR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Henry Lee Bulluck v. Nash County Health Department & EHNR	93 EHR 0348	Morgan	07/22/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Richard F. Ebemold v. Jackson County Health Department & EHNR	93 EHR 1391	Chess	06/24/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
H.A. Lentz v. Department of Environment, Health, & Natural Resources	94 EHR 0235	Nesnow	07/19/94	
Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	

### *Environmental Management*

David Springer v. Dept. of Environment, Health, & Natural Resources	92 EHR 1797	Morgan	05/19/94	
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	

### *Land Resources*

Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	
Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res.	94 EHR 0525	Gray	07/01/94	9:8 NCR 581

### *Marine Fisheries*

Robert I. Swinson, Virginia S. Swinson v. EHNR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
Larry J. Batson v. Division of Marine Fisheries	93 EHR 0857	Morgan	07/22/94	
David W. Ogleby v. Division of Marine Fisheries	93 EHR 0930 <sup>2</sup>	West	07/25/94	9:10 NCR 758
David E. Ogleby v. Division of Marine Fisheries	93 EHR 0931 <sup>2</sup>	West	07/25/94	9:10 NCR 758
James Goodman v. EHNR, Division of Marine Fisheries	94 EHR 0035	Nesnow	07/18/94	9:9 NCR 660

### *Solid Waste Management*

Roger Sessions v. EHNR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
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\* Consolidated Cases.

**CONTESTED CASE DECISIONS**

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
<b>HUMAN RESOURCES</b>				
Brenda C. Robinson v. Department of Human Resources	94 DHR 0365	West	06/01/94	
Betty Rhodes v. Department of Human Resources	94 DHR 0501	Morrison	06/02/94	
<i>Distribution Child Support</i>				
Jachell D. Parker v. Department of Human Resources	93 DCS 0371	Morgan	07/14/94	
<i>Division of Child Development</i>				
Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit DHR, Division of Child Development v. Joyce Gale	93 DHR 0973	Morrison	03/08/94	
Laureen Holt, ID#26-0-00037 v. DHR, Div. of Child Development	93 DHR 1344	Gray	04/28/94	
Gloria C. Haith v. Department of Human Resources	93 DHR 1549	Becton	07/13/94	
Gloria C. Haith v. Daycare Consultant	93 DHR 1707	Nesnow	03/22/94	
Charles E. Smith v. Department of Human Resources	93 DHR 1787	Nesnow	03/14/94	
Scott's Loving Day Care & Nursery, Mrs. Willie L. Scott v. DHR	93 DHR 1797	Nesnow	03/21/94	
Belinda K. Mitchell v. Human Resources, Div. of Child Development	94 DHR 0106	Nesnow	06/29/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0119	Reilly	06/30/94	
	94 DHR 0168	Nesnow	03/23/94	
<i>Facility Services</i>				
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J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
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Robert Lee Barrett v. Department of Human Resources	93 CSE 1172	Morrison	04/20/94	
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Charles Leonard Fletcher v. Department of Human Resources	93 CSE 1649	Becton	07/20/94	
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<b><i>Division of Marine Fisheries</i></b>				
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<b><i>Durham County Department of Social Services</i></b>				
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<b><i>Haywood County Department of Social Services</i></b>				
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*Department of Transportation*

Glenn L. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0297*	Morrison	03/10/94	9:1 NCR 60
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*University of North Carolina at Chapel Hill*

Eric W. Browning v. UNC-Chapel Hill	93 OSP 0925	Morrison	05/03/94	9:5 NCR 342
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*UNC Hospitals*

Barry Alonzo Nichols v. UNC Hospitals Central Dist. Sect.	94 OSP 0509	Morrison	06/15/94	
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*Wake County School System*

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*The Whitaker School*

Dwayne R. Cooke v. The Whitaker School	94 OSP 0328	Chess	06/02/94	
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**STATE TREASURER**

*Retirement Systems Division*

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James E. Walker, Ind. & Admin for the Estate of Sarah S. Walker v. Bd./ Trustees/N.C. Local Govt. Emp. Ret. System	93 DST 1054	Becton	05/31/94	9:7 NCR 490
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Kenneth A. Glenn v. Bd./Trustees/Teachers' & St Employees' Ret. Sys.	93 DST 1612	Morrison	05/18/94	
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Nixon Omolodun v. UNC Physicians and Associates	94 UNC 0295	Chess	06/27/94	
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STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF CARTERET

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DAVID W. OGLESBY, )  
Petitioner, )  
v. ) 93 EHR 0930  
)  
DIVISION OF MARINE FISHERIES, )  
Respondent, )  
)

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DAVID E. OGLESBY, )  
Petitioner, )  
v. ) 93 EHR 0931  
)  
DIVISION OF MARINE FISHERIES, )  
Respondent. )  
)

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## RECOMMENDED DECISION

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This contested case was heard on April 18, 1994 in Beaufort by Administrative Law Judge Thomas R. West.

### APPEARANCES

**For Petitioner:** David W. Oglesby - pro se  
David E. Oglesby - pro se

**For Respondent:** Timothy D. Nifong  
Assistant Attorney General

### ISSUE

Is Respondent N. C. Division of Marine Fisheries' recommendation that Carteret County shellfish leases number 254, held by Petitioner David W. Oglesby, and number 780, held by Petitioner David E. Oglesby, not be renewed because each lease lies within waters that have been closed to shellfishing because of pollution arbitrary and capricious or otherwise unsupported by North Carolina law?

### ISSUE

Official notice is taken of Chapter 113 of the General Statutes of North Carolina; 15A NCAC 18A .0900 et. seq.; and 15A NCAC 30 .0205(e).

**WITNESSES**

**For Petitioner:**

Reuben Lilly - Mill Creek resident  
Theodore Howell - Mill Creek resident, part-time commercial fisherman  
Raymond Graham - Mill Creek resident, shellfish leaseholder

**For Respondent:**

George Gilbert - Assistant Branch Chief, Shellfish Sanitation Branch,  
N. C. Division Environmental Health  
Loie Priddy - Coastal Area Surveyor, N. C. Land Resources Division  
Mike Marshall - Chief, Resource Enhancement Section, N. C. Division Marine Fisheries

**BURDEN OF PROOF**

Petitioners have the burden of proving, by the greater weight of the evidence, that the Division of Marine Fisheries (DMF) acted unreasonably by recommending against renewal of Petitioners' respective public bottom shellfish leases.

**EXHIBITS**

The following exhibits whose numbers are preceded by an "R" were placed into a trial notebook and introduced at the hearing by DMF. The notebook contains a "TABLE OF CONTENTS for Respondents Exhibits" with a description of each of the exhibits. Reference should be made to that list for a description of DMF's exhibits.

R1-R7

The following exhibits whose numbers are preceded by a "P" were prepared and introduced by Petitioners at hearing. A description of Petitioners' exhibits follows:

P1 - Map of Shellfish Sanitation Branch Bacteriological Sampling Station locations in the Newport River area, Carteret County

P2 - Summary Table of Shellfish Sanitation Branch Bacteriological Sampling Data for Area E-4, 7/10/91 through 8/23/93

**STATEMENT OF THE CASE**

Petitioners' shellfish leases number 780 and 254 in Newport River, Carteret County, lie entirely within an area closed to shellfishing because of pollution.

Petitioners contend that they have been singled out and treated unfairly by Respondent in that denial of renewal is recommended for each of their leases, while the shellfish lease of a third leaseholder whose lease is also located within the area of Newport River closed to shellfishing because of pollution, Mrs. Shirley Howell, was recently recommended for renewal by Respondent.

The Division of Marine Fisheries (DMF) argues that the statutes and rules governing shellfish leases in North Carolina do not authorize the leasing of areas "recommended to be closed to shellfishing by reason of pollution", and that Petitioners' leases fall within the ambit of that term as it is defined by the Marine Fisheries Commission (MFC). DMF further contends that its decision to recommend against the renewal of Petitioners' leases while recommending the renewal of Mrs. Shirley Howell's lease was entirely consistent and supported by law. DMF therefore asserts that Petitioners have failed to establish that Respondent's decision to recommend against renewal of their shellfish leases was unreasonable.

Based upon the substantial evidence admitted, the undersigned finds the following:

**FINDINGS OF FACT**

**I.**

1. Petitioner David E. Oglesby is a part-time commercial fisherman residing in the Mill Creek area of Carteret County. Mr. David E. Oglesby holds shellfish lease number 780 in Newport River, Carteret County, by written agreement with Respondent agency.
2. Petitioner David W. Oglesby, son of Petitioner David E. Oglesby, works in Chapel Hill. Mr. David W. Oglesby holds shellfish lease number 254 in Newport River, Carteret County, by written agreement with Respondent agency.
3. G.S. 113-202 vests the Secretary of DEHNR with the authority to issue shellfish cultivation leases in publicly owned coastal submerged lands. Prior to January 1, 1994, that leasing authority resided in the MFC.
4. Respondent DMF administers the State's shellfish leasing program according to the terms of Chapter 113 of the North Carolina General Statutes and pertinent MFC rules. A shellfish lease may be granted to a North Carolina resident who applies for such lease if the proposed lease meets all leasing criteria set out in G.S. 113-202 and in MFC rules.
5. G.S. 113-202 is, by its terms, applicable both to initial shellfish leases and renewal shellfish leases.
6. The term of either an initial or a renewal lease is ten (10) years.
7. G.S. 113-202(j) requires that each lease renewal application be accompanied by a \$50.00 filing fee. In this case, each Petitioner paid the \$50.00 application fee.
8. G.S. 113-202(j) also requires that a shellfish lease-holder pay an annual rental fee of \$5.00 per acre. The annual rental fee is due "in advance prior to the first day of April each year." For that reason, in a case where DMF has recommended that a lease be terminated or not be renewed and the termination/non-renewal proceedings encompass the January to April period, DMF accepts the required rental payment as if the lease was not in termination proceedings in order to preserve the leaseholder's right if the lease is not terminated. Thereafter, if the lease is terminated before the end of the rental year, DMF refunds the rental payment on a pro-rated basis for the remaining months in the rental year. In the case at hand, both Petitioners have paid, and Respondent has accepted, the \$5.00 per acre rental fee for their respective shellfish leases number 780 and 254 for the period during which lease renewals have been pending.
9. G.S. 113-202(a) provides the minimum shellfish leasing criteria for North Carolina waters. Included in those criteria is a provision concerning shellfish leases in areas having polluted waters:
  - (6) The area leased must not include an area which the State Health Director has recommended be closed to shellfish harvest by reason of pollution.
10. 15A NCAC 30 .0205(e) defines the statutory term "closed to shellfish harvest by reason of pollution" as follows:

Pursuant to G.S. 113-202(a) (6), the Secretary is not authorized to recommend approval of renewal of a shellfish lease in an area closed to shellfishing by reason of pollution. Shellfish leases partially closed due to pollution must be amended to exclude the area closed to shellfishing prior to renewal. For the purposes of this Paragraph, an area will be considered

closed to shellfishing by reason of pollution when the area has been classified as prohibited or has been closed for four (4) or more consecutive years prior to renewal upon recommendation by the State Health Director, except shellfish leases in areas which have been closed for four (4) or more years and continue to meet established production requirements by sale of shellfish through relay periods or other recognized means shall not be considered closed due to pollution for renewal purposes.

11. According to DMF's interpretation of 15A NCAC 30 .0205(e), the rule establishes two (2) classes of shellfish growing waters wherein DMF is not authorized to recommend approval of a shellfish lease renewal:
  1. Waters classified as "prohibited"; and
  2. Waters closed to shellfish harvest for four (4) or more consecutive years immediately prior to renewal where the leaseholder has not met the production requirements of the lease through relaying, depuration and harvest.
12. DMF believes the purpose of the rule, with regard to the second classification, is to ensure that leaseholders in areas that became polluted during the term of the lease were not automatically precluded from having their leases renewed if those shellfish leaseholders historically had met production requirements for their leases located in polluted areas by relaying shellfish from the closed area to a lease in an open area held by the leaseholder.
13. DMF has consistently implemented Rule 15A NCAC 30 .0205(e) since its enactment; applying it only to those polluted area leaseholders who have "continue(d) to meet established production requirements ... by recognized means ...." and not to all persons who hold shellfish leases located in closed, polluted areas.

**II.**

14. The Shellfish Sanitation Branch (SSB) of the Division of Environmental Health, an agency of the N. C. Department of Environment, Health and Natural Resources (DEHNR), classifies all potential North Carolina shellfish growing waters for the purposes of shellfish cultivation and harvest.
15. Agency rules, set out at 15A NCAC 18A .0903, require SSB to complete a sanitary survey, by area, of potential state shellfish growing waters every (3) years. The sanitary survey consists of a shoreline survey to identify sources of water pollution, a hydrographic survey to evaluate meteorological and hydrographic factors that may affect the distribution of water pollutants, and a bacteriological survey to assess water quality within the meaning of SSB rules. During the three (3) year evaluation period, a minimum of five (5) water samples are collected annually from each of numerous sampling stations distributed throughout the survey area.
16. SSB's bacteriological survey tests waters for the presence of fecal coliform bacteria. Such bacteria are present in the digestive tracts of all warm-blooded organisms. While fecal coliform bacteria are not harmful in and of themselves, they are a good indicator that the waters in which they are found have a high potential to contain human pathogenic organisms that may contaminate any shellfish found in those waters.
17. Shellfish contaminated by such human pathogens pose a significant threat to public health. Consequently, SSB rules require that waters with significant concentrations of fecal coliform bacteria be closed to the direct harvest of shellfish for human consumption.

18. The primary reasons for such closure recommendations are twofold:

1. To protect public health by precluding contaminated shellfish from being harvested and eaten or sold for consumption; and
2. To comply with federal shellfish growing water requirements promulgated by the U. S. Food and Drug Administration. Failure to meet federal requirements may result in the banning of interstate shipments of North Carolina shellfish.

III.

19. Based on the results of a sanitary survey within any growing area, potential shellfish growing waters are placed into one (1) of four (4) shellfish harvest categories:

1. Approved;
2. Conditionally approved;
3. Restricted;
4. Prohibited,

as provided for in 15A NCAC 18A .0090.

20. The classification status assigned to an area of coastal waters through a sanitary survey remains in effect until the completion of the next sanitary survey for the area.

21. Shellfish may not be directly harvested for human consumption from either "prohibited" or "restricted" waters. However, under permit from DMF, shellfish may seasonally be relayed from restricted waters so that the shellfish may depurate (cleanse) themselves of contaminants and eventually be harvested for consumption.

22. Shellfish may be harvested for human consumption from "conditionally approved" waters at such times as they are not posted as closed or otherwise closed to harvest. Shellfish may be harvested from approved waters at any time shellfish harvest is otherwise lawful.

23. Upon receiving a written recommendation from SSB that an area of coastal waters be closed to shellfish harvest because of pollution, DMF takes two actions. First, the Fisheries Director issues a proclamation closing the waters to shellfishing as required by 15A NCAC 3K.0101(a). Second, Respondent's law enforcement officers erect signs along the boundary of the closed area warning the public that the area is closed to the harvest of shellfish because of pollution.

24. Following the posting of such areas, it is the responsibility of DMF's law enforcement officers to patrol the closed waters to ensure that polluted shellfish are not being harvested and brought to market.

25. In the case of Newport River, during the last survey period (1987 through 1990), at least five (5) water samples were taken from sampling stations located within the area identified by SSB as Growing Area E-4, which includes the waters of Newport River wherein Petitioners' leases number 780 and 254 are located.

26. SSB's sampling station number five (5), delineated in its 1990 sanitary survey for Area E-4, and stations forty-three (43) and fifty-seven (57), delineated in SSB's subsequent bacteriological sampling data summaries for Area E-4, are located immediately adjacent to leases number 780 and 254.

27. Based on SSB sanitary surveys, the waters overlying leases number 780 and 254 were classified as "restricted" under SSB's classification system at the time Petitioners applied for renewal of their respective shellfish leases, and remain so designated at present.
28. The waters immediately downstream of the upper Newport River closure line are classified by SSB as comprising a "conditionally approved" area.
29. The upper portion of the Newport River was originally closed to shellfishing because of pollution on May 29, 1974 by proclamation of the Director of the North Carolina Department of Conservation and Development (NCDCD). That closure resulted from a recommendation made to NCDCD in May 1974 as a result of a sanitary survey by the SSB's predecessor agency, the Shellfish Sanitation Unit of the Division of Health Services. (See Exhibit R2)
30. In response to the 1974 proclamation closing the upper reaches of the Newport River to shellfish harvest, DMF agents marked the closed area by erecting signs along the boundary of the closure line giving notice of the closure to shellfishing. As is its usual practice due to the time and cost involved in a formal survey, DMF established the field marking of the closure line without benefit of an actual field survey. Instead, the marking was based on closed area maps provided to DMF by the Shellfish Sanitation Unit.
31. The upper reaches of the Newport River in the area of leases number 780 and 254 remained closed after the 1977, 1980, 1986 and 1990 sanitary surveys for Area E-4 because of continued pollution. (See Exhibit R3)
32. The end-point coordinates of the closure line as established in May 1974 have remained constant to the present.
33. Accordingly, the water overlying shellfish leases number 780 and 254 were "closed" to shellfishing by reason of pollution in 1990 and 1992 when the leases respectively came up for renewal and remained "closed" to shellfishing at the time of this hearing.

IV.

34. On February 14, 1990, Petitioner David E. Oglesby applied to DMF to renew his shellfish lease number 780.
35. Review of the lease application by DMF indicated that according to the posted closure line for the upper Newport River, approximately one-half of lease number 780 lay within waters closed to the taking of shellfish because of pollution.
36. DMF informed Mr. David E. Oglesby that DMF would recommend renewal of lease number 780 excluding that portion lying in a closed, polluted area. Mr. Oglesby accepted the proposed modified lease renewal.
37. In March of 1991, DMF recommended to the Marine Fisheries Commission (hereafter "MFC") renewal of that portion of lease number 780 lying outside the closed, polluted area. MFC accepted DMF's recommendation and approved the modified renewal.
38. In April 1991, DMF notified Mr. David E. Oglesby that MFC had approved renewal of lease number 780 as modified and informed him that under MFC rules, a new survey of the modified lease would be required prior to the formal lease contract being executed.
39. Mr. David E. Oglesby requested that DMF verify the marking of the polluted area closure line before he paid for a lease survey. DMF agreed to Petitioner's request.

40. In May 1991, DMF contacted the State Geodetic Survey and requested a preliminary investigation of the location of the upper Newport River closure line. That investigation indicated that the actual line established by the May 29, 1974 closure proclamation was significantly downstream of its then marked location.
41. As a result of the investigation, DMF brought the matter of the renewal of lease number 780 back before the MFC, which remanded the matter back to DMF for further consideration of whether any portion of lease number 780 was in an area open to shellfish harvest and could therefore be renewed.
42. DMF subsequently requested that in conducting its ongoing sanitary survey for Area E-4, SSB take additional water samples from the Newport River in the immediate vicinity of lease number 780 to determine if the shellfish harvest closure line could be moved upstream so as to place all or a portion of lease number 780 in an area open to shellfish harvest.
43. In response to DMF's request, SSB established two new sampling stations in Area E-4, stations number forty-three (43) and fifty-seven (57). (See Finding of Fact No. 26)
44. Lease number 254 adjoins lease number 780 to the south in the Newport River.
45. According to the posted closure line for upper Newport River as it was marked in 1991, approximately one-half of lease number 254 lay within waters closed to the taking of shellfish because of pollution. However, DMF's investigation of lease number 780 indicated that lease number 254 also lies entirely within the polluted area established by the 1974 closure line.
46. In January 1992, DMF notified Mr. David W. Oglesby by letter that lease number 254 was up for renewal in 1992 but that it presently lay in a polluted area and that SSB monitoring did not appear to indicate that the closure line could be moved upstream. DMF informed Mr. Oglesby that it was offering this information in advance since the renewal application fee was non-refundable.
47. On February 21, 1992, Petitioner David W. Oglesby applied to Respondent to renew shellfish lease number 254.
48. In May 1992, DMF asked Mr. Loie Priddy, a registered land surveyor with the State Geodetic Survey, using the original 1974 closure line coordinates recommended by SSB, to formally survey the marked closure line in the upper Newport River in order to verify its location.
49. Mr. Priddy's May 1992 survey showed that the marked closure line was approximately 500 feet upstream of the actual closure line. Mr. Priddy also verified that lease number 780, as well as adjacent shellfish lease number 254, rather than being bisected by the closure line, lay entirely within the closed, polluted area. (See Exhibit R7)
50. In February 1993, DMF requested that SSB provide a status report on its finding with respect to the effect of its additional monitoring in the upper Newport River on potential re-location of the shellfish harvest closure line.
51. Mr. George Gilbert, Assistant Branch Head in SSB, responded that the water quality sampling data collected by SSB indicated at that time that there was no possibility of moving the shellfish harvest closure line further upstream. Mr. Gilbert also opined that it was likely that if the closure line was moved at all, that it would probably have to be moved further downstream.
52. On June 28, 1993, by separate letters, DMF informed Mr. David E. Oglesby and Mr. David W. Oglesby that it intended to recommend denial of each of their respective lease renewals in the Newport River because:

1. Each lease lay entirely within an area closed to the harvest of shellfish because of pollution;
2. SSB sampling indicated that there was no reasonable possibility that the closure line could be moved so as to exclude their leases; and
3. The leases do not fall under the polluted area exclusion set out by MFC Rule 15A NCAC 30.0205.

53. On August 28, 1994, Mr. David E. Oglesby filed a Petition for a contested case hearing in the matter of DMF's decision to recommend against renewal of lease number 780.

54. On August 30, 1993, Mr. David W. Oglesby filed a Petition for a contested case hearing in the matter of DMF's decision to recommend against renewal of lease number 254.

V.

55. Between 1974 and the inception of this contested case, Petitioners cultivated and harvested shellfish on the portion of their respective leases downstream of the marked upper Newport River shellfish harvest closure line.

56. During that period, DMF law enforcement officers have, on several occasions, been observed interacting with Petitioners while they worked on their leases number 780 and 254.

57. Mr. Theodore Howell often works shellfish lease number 285, which is held by his mother, Mrs. Shirley Howell, in the Upper Newport River.

58. Lease number 285 is located upstream of leases number 780 and 254, and lies entirely within the area closed to shellfish harvest by reason of pollution was established by the 1974 closure line both as originally mis-marked and as properly located.

59. Although shellfish lease number 285 lies entirely within a polluted area, the lease was renewed in 1992 by the MFC upon recommendation by DMF.

60. Mr. Howell has continuously met the minimum production requirements for lease number 285 by relaying shellfish from lease 285 to a second lease held by Mrs. Howell in an approved area, depurating them appropriately and harvesting them in sufficient quantities to meet the minimum production requirements established by MFC rule. As a result, and pursuant to 15A NCAC 30 .0205(e), DMF recommended the renewal of Mrs. Howell's Newport River lease number 285.

61. Because they believed at least half of the leases lay within waters outside the closure line posted by Respondent, neither Petitioner David E. Oglesby nor Petitioner David W. Oglesby has attempted to meet the minimum production requirements for his respective shellfish lease by relaying and depurating shellfish.

62. For the same reason, Petitioners David E. Oglesby and Petitioner David W. Oglesby have not applied to DMF for a lease in an open area that would allow them to relay, depurate and harvest shellfish from leases number 780 and 254.

63. Petitioners have recently discussed with Mr. Raymond Graham the possibility of buying or sub-leasing Mr. Graham's Newport River shellfish lease in an approved area in order to relay, harvest and depurate shellfish from their leases number 780 and 254. Mr. Graham has indicated willingness to enter into such an arrangement.

64. Petitioners presented no evidence concerning the investment of time and monies in lease numbers 780 and 254.

Based on the foregoing, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. G.S. 113-202(a)(6), read in conjunction with G.S. 113-202(p), prohibits the renewal of a shellfish lease that includes any area of public bottom that "the State Health Director has recommended be closed to shellfish harvest by reason of pollution."
2. Since 1974, the parties have operated under the mutual mistake that leases 780 and lease 254, or at least significant portions thereof, are not in an area "closed" to shellfishing by reasons of pollution.
3. The parties have operated under a mutual mistake of fact regarding the status of the waters in lease 780 and lease 254 from 1974 until May 1991 and January 1992 respectively.
4. The purpose of the exception to 15A NCAC 30 .0205(e) is to allow shellfish leaseholders not to be automatically precluded from renewing their leases when they have historically met production requirements for their leases located in polluted areas by relaying, depurating and harvesting in sufficient quantities.
5. The mutual mistake of fact has prevented Petitioners from seeking to come within the exception to 15A NCAC 30 .0205(e).
6. The equitable solution to this case would be to renew Petitioners' leases upon the express conditions that Petitioners obtain a lease in open, approved waters and over a four (4) year period meet established production requirements through relay periods or other recognized means. This solution would require an enforcement and monitoring effort particularized to Petitioners' leases.
7. The mutual mistake in this case has not resulted in any deprivation of Petitioners' substantial property rights because Respondent has not terminated the leases prior to their term and the application fees and rent were voluntarily paid by Petitioners at a time when the mutual mistake had been discovered. Petitioners have enjoyed the benefits of the leases during the pendency of these cases. There is no evidence of any economic loss.
8. As a result, the equitable solution is outweighed by the need to protect the public health.
9. Respondent's denial of Petitioners' lease renewal applications is not arbitrary and capricious or otherwise illegal.

Based on the foregoing, the undersigned makes the following:

**RECOMMENDED DECISION**

The Secretary of the Department of Environment, Health and Natural Resources should deny the relief sought by Petitioners David W. Oglesby and David E. Oglesby.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Secretary of the North Carolina Department of Environment, Health and Natural Resources.

This the 25th day of July, 1994.

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Thomas R. West  
Administrative Law Judge

**CONTESTED CASE DECISIONS**

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STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
94 DST 0045

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DEBORAH W. STEWART,	)	
Petitioner,	)	
	)	
v.	)	
	)	
THE BOARD OF TRUSTEES OF THE	)	
TEACHERS' AND STATE EMPLOYEES'	)	
RETIREMENT SYSTEM,	)	RECOMMENDED DECISION
Respondent,	)	
	)	
and	)	
	)	
ANTHONY L. HOPE and	)	
DERRICK L. HOPE,	)	
Intervenors-Respondent.	)	

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This matter came on for hearing before Administrative Law Judge Dolores O. Nesnow on June 9, 1994, in Charlotte, North Carolina.

**APPEARANCES**

**For Petitioner:**

Patricia E. King  
Attorney at Law  
4000 Beatties Ford Road  
Charlotte, North Carolina 28216  
Attorney for Petitioner

**For Respondent:**

Alexander McC. Peters  
Associate Attorney General  
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Attorney for Respondent

**For Intervenor-Respondent:**

Paul L. Whitfield  
Attorney at Law  
1500 E. Fourth Street  
Charlotte, North Carolina 28204  
Attorney for Intervenor-Respondent

**ISSUE**

Is Petitioner entitled to the return of contributions from the Teachers' and State Employees' Retirement System for Barbara Hope, deceased, as well as the death benefit payable as the result of the death of Barbara Hope?

**STATUTES AND RULES IN ISSUE**

N.C. Gen. Stat. 135-5(f)  
N.C. Gen. Stat. 135-5(l)

**EXHIBITS**

**For Petitioner:**

P#1 Barbara Hope's change in beneficiary form dated 8/5/93.  
P#2 Barbara Hope's change in beneficiary form dated 8/17/93.  
P#3 Letter to Deborah Stewart from Haywood County Hospital dated 1/21/94.  
P#4 Amended death certificate of Barbara Hope dated 6/3/94.

**For Respondent:**

R#1 Barbara Hope's designation of beneficiary form dated 9/28/82.  
R#2 Barbara Hope's change in beneficiary form dated 6/9/87.  
R#3 Barbara Hope's change in beneficiary form dated 8/5/93.  
R#4 Form memo to Barbara Hope from State Retirement System dated 8/23/93.  
R#5 Barbara Hope's change in beneficiary form dated 8/17/93.

**For Intervenor-Respondent:**

R#6 8x10 family photo showing Barbara Hope, her husband and her two sons. (This exhibit was returned into the custody of the family)

**WITNESSES**

**For Petitioner:**

Deborah W. Stewart - Petitioner

**For Respondent:**

John Marshall Barnes, III - Deputy Director, N.C. Retirement System

**For Intervenor-Respondent:**

Calvin Luckey - Barbara Hope's husband  
Derrick Hope - Barbara Hope's son  
Anthony Hope - Barbara Hope's son

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence and the entire record in this proceeding, the undersigned makes the following:

**FINDINGS OF FACT**

1. Barbara Hope, the deceased, was a State employee and a member of the North Carolina Retirement System for Teachers and State Employees, as designated in N.C. General Statute, Chapter 135.

2. Barbara Hope had two sons, Anthony Hope and Derrick Hope, both of whom were Ms. Hope's natural children.

3. In 1986, Ms. Hope married Calvin Luckey. They lived together with Derrick and Anthony at 446 Benjamin Street, Charlotte, North Carolina, and later at 2421 Remus Road, Charlotte, North Carolina.

4. In 1987, Barbara Hope developed a foot infection which became ulcerated and which resulted in her leaving State employment temporarily on disability leave.

5. Ms. Hope was later able to return to work but in April of 1992, she suffered a stroke. She was placed in the intensive care unit of a Charlotte Hospital for two to three weeks and was subsequently in the Hospital for six and one-half weeks on rehabilitation.

6. The stroke was severe and Ms. Hope had to relearn how to walk and talk.

7. Mr. Luckey testified that he went to visit Ms. Hope when she was "at rehabilitation". He testified that he visited every day and his sons went with him on Saturday. He further testified that neither one of his sons has a drivers license.

8. After her hospitalization Ms. Hope was released and returned home.

9. Ms. Hope never again regained her normal capacity for many daily life functions such as tying her shoes and taking a bath.

10. Additionally, after the stroke, Ms. Hope's mind was never again clear. She was frequently unable to identify her husband and her children and repeatedly asked "Who are you?"

11. Ms. Hope's son had a family photograph showing Mr. Luckey, Ms. Hope, and Anthony and Derrick. He would often show this photo to his mother and explain to her who each person was.

12. Occasionally, she would remember who she was and be able to converse with her family.

13. Often, she would cry and sob and when her husband questioned her, she would not be able to explain why she was crying.

14. Occasionally, Ms. Hope would walk away from the home and would have to be brought back by her husband or sons.

15. During this period of time, Ms. Hope's condition continued to deteriorate and she was in and out of the hospital many times.

16. Towards the end of her life, Ms. Hope was hospitalized with a urinary tract infection. She also suffered from hyperthyroid anemia and non-Hodgkins Lymphoma stage four.

17. During her last hospitalization, the doctors told the family that she was reaching the end of her life.

18. On one occasion prior to Ms. Hope's final hospitalization, her niece, Deborah Stewart, picked up Ms. Hope at her home and drove her to the insurance company where Ms. Hope altered her policy, deleting her sons as beneficiaries and designating Deborah Stewart as beneficiary.

19. On another occasion when Ms. Hope was in the hospital, her husband visited and saw Deborah Stewart and Deborah's mother leaving Ms. Hope's room. When Mr. Luckey went into the room, Ms. Hope was crying. He asked her why she was crying and she said "People are asking me so many questions."

20. Subsequently, Mr. Luckey called the hospital to speak with Ms. Hope and was told that she had been transferred to Haywood County. When he inquired as to how the transfer had occurred, he was told that Ms. Hope was transferred on the authority of her niece, Deborah Stewart.

21. Mr. Luckey later asked Ms. Stewart where Ms. Hope was and Ms. Stewart replied that she was somewhere in Asheville.

22. Mr. Luckey continued to question her and eventually Ms. Stewart told Mr. Luckey that she had had Ms. Hope transferred to a nursing facility in Haywood County.

23. Mr. Luckey then recalled that on the day before when he visited Ms. Hope, Ms. Hope had told him that she didn't want to go to Haywood County. He assured her that she didn't have to go anywhere she didn't want to go.

24. After he learned where his wife was, Mr. Luckey rented a car and drove to visit her. He and Derrick and Derrick's Uncle John went with Mr. Luckey. When they saw Ms. Hope, she was very swollen over most of her body.

25. Mr. Luckey's last visit occurred on Saturday, September 18, 1993.

26. On Monday, September 20, 1993, at approximately 3:45 a.m., Mr. Luckey received a phone call from the facility in Haywood County informing him that Ms. Hope had died.

27. Anthony testified that no one in the family gave Deborah Stewart permission to move their mother to Haywood County. Anthony further testified that this mother did not know what she was doing and did not recognize people.

28. Derrick testified that at the time of his mother's funeral, which was being arranged by the Beasley Funeral Home, Mr. Beasley called and asked the two sons to come into his office. When they arrived, Deborah Stewart was there.

29. Mr. Beasley asked each of the sons to sign two pieces of paper. Mr. Beasley then gave each of the sons \$300.00 and gave a check in an unknown amount to Deborah Stewart.

30. Derrick is unable to read and does not know what was contained in the two documents which he signed.

31. Anthony testified that he is able to read but that he does not know what was contained in the two documents he signed.

32. On the following day, Deborah Stewart gave each of the sons an additional \$200.00.

33. Derrick testified that he and his brother had been the beneficiary of their mother's life insurance policy which they understood to be worth \$10,000.00.

34. Anthony testified that his mother had a \$10,000.00 insurance policy and that both he and Derrick do not know what happened to the \$10,000.00.

35. Anthony testified that Deborah Stewart made all of the funeral arrangements and paid the funeral bill. He also testified that Deborah Stewart took his mother in her car to the insurance company to change the beneficiary on her insurance policy. He testified that he is certain that his mother did not know what she was doing.

36. Ms. Stewart testified that Mr. Luckey had stopped paying the premiums on Ms. Hope's insurance policy and that Ms. Stewart told her aunt, Barbara Hope, that she would pay the premiums on the policy if Ms. Hope would change the beneficiary from her sons to Deborah Stewart

37. Ms. Stewart testified that she cashed one insurance policy which listed her as beneficiary and that out of that policy, she paid Beasley for the funeral and she gave each of the sons \$300.00, leaving her with \$3,000.00.

38. Deborah Stewart testified that when her aunt, Barbara Hope, was in the hospital, she visited her many times. She testified that she and her aunt talked a lot and that her aunt believed that her children did not love her because they did not visit often enough.

39. Ms. Stewart testified, but it is not found as fact, that Ms. Hope wanted to change her beneficiaries.

40. Ms. Stewart made arrangements for a Notary Public, Mr. Gray, to come into the hospital and notarize the change of benefits on the State Retirement and Death Benefits Form, changing the beneficiary from Ms. Hope's sons to Deborah Stewart.

41. Ms. Stewart mailed that change of beneficiary to the State but the Notary's certification had been incorrectly completed.

42. Ms. Stewart then made arrangements for another Notary Public, Hazel Elmore, to come to the hospital. The form was again filled out, changing the beneficiaries from Ms. Hope's two sons to Deborah Stewart. It was notarized and Ms. Stewart mailed it back to the State Retirement System.

43. Although that change of beneficiary form was signed as completed on August 17, 1993, it apparently was not mailed to the State until sometime later. The State Retirement System received that form on September 20, 1993.

44. Ms. Stewart testified that she had "power of attorney" for her aunt, Barbara Hope. She did not, however, have any proof of this "power of attorney" and Mr. Luckey as well as both sons, testified that they had no knowledge of Barbara Hope giving "power of attorney" to her niece.

45. Ms. Stewart testified that after Ms. Hope's death, Wanda Outlaw of the State Retirement System, told her over the phone to mail in the original copy of Ms. Stewart's power of attorney, which Ms. Stewart testified that she did without keeping a copy.

46. Ms. Stewart testified that Ms. Hope, at one time, was not able to recognize family members or know who they were but that she got better and later occasionally knew who people were.

47. Ms. Stewart has a sister who works for the State.

48. The original death certificate for Barbara Hope listed the date of death as Sunday, September 19, 1993. That date was incorrect and was subsequently changed and certified as Monday, September 20, 1993, at 3:37 a.m.

49. On Monday, September 20, 1993, Ms. Stewart also learned that her aunt had died. She then called the State Retirement System to report the death.

50. Ms. Stewart testified that she did not sign any checks from the State Health Benefits Plan and that even though there were allegations that there were checks which were forged after Ms. Hope's death, Ms. Stewart was not the one who signed them.

51. Marshall Barnes of the State Retirement System testified, and it is found as fact, that his office received a change of beneficiary form on Barbara Hope on August 23, 1993, but that that form had an incomplete notary certification.

52. Mr. Barnes confirmed that that form was returned along with a memo indicating what was missing on the form. Mr. Barnes testified, and it is found as fact, that correspondence such as the above, is never sent to beneficiaries, but is always sent only to the "member" of the Retirement System.

53. The letter indicating that the form received on August 23, 1993 was incomplete, had been sent to Ms. Hope at 2421 Remus Road, Charlotte, North Carolina.

54. It is unknown how Ms. Stewart received the notice of the improperly completed change of beneficiary form.

55. Mr. Barnes's office received a second change of beneficiary form on September 20, 1993, which had been signed on August 17, 1993, and notarized on that same date.

56. Mr. Barnes testified, and it is found as fact, that Deborah Stewart called his office on September 20, 1993, informing him of the death.

57. Mr. Barnes testified that the change of beneficiary form was received in his office on Monday, September 20, 1993, but that the mail at his office is generally distributed at approximately 9:30 a.m. to 10:00 a.m. When Ms. Stewart called, Mr. Barnes asked Ms. Stewart to inform him of the time of death and also to send a certified copy of the death certificate.

58. On September 20, 1993, Mr. Barnes coincidentally also received a letter from Deborah Stewart asking the Retirement System to send all future mail to her address. Mr. Barnes testified that this would not have been done but since Ms. Hope died on that date, it became unnecessary to deal with this issue.

59. Mr. Barnes testified that since Ms. Hope died at 3:37 a.m., on September 20, 1993, he could not have received the change of beneficiary form until the mail had been distributed on that same Monday, September 20, 1993. He further testified that since the member had died before the form had been "filed" with the State Retirement System as required by law, that the change of beneficiary had not been effected.

60. N.C. Gen. Stat. 135-5(f) provides for the return of accumulated contributions upon the death of a member. That Statute states in pertinent part:

- (a) upon receipt of proof...
- (b) prior to retirement...
- (c) of a member or former member...
- (d) there shall be paid (return of contributions)
- (e) to such person or persons as the member shall have nominated by written designation...
- (f) duly acknowledged...
- (g) and filed with the Board of Trustees.

61. N.C. Gen. Stat. 135-5(l) provides for the payment of the death benefit plan. The provision for payment is substantially the same as that outlined above.

62. Neither party contests that the Retirement System received satisfactory proof of death for Barbara Hope.

Based upon the above Findings of Fact, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. The Respondent Retirement System asserts that the change of beneficiary form must be filed with the Board of Trustees prior to the member's death. None of the pertinent key words used in N.C. Gen.

Stat. 135-5(f) or (l) are defined in the Statute except for the word "filing" which is defined as meaning "the receipt of an acceptable application on a form provided by the Retirement System".

In reviewing the language of those statutes, the intent appears to be clear that no monies will be paid out until a properly executed beneficiary form has been "filed" and there has been a receipt of proof of death.

A careful and deliberate reading of the provisions of these Statutes indicates that there is no requirement that the member must be alive at the moment the written designation of beneficiary is "filed" with the Board of Trustees.

The receipt of Barbara Hope's change of beneficiary form, which form was received several hours after Ms. Hope's death, designating Deborah Stewart as her sole beneficiary for both accumulated contributions and death benefits, is not invalid because the member died after the form was completed but before it was "filed".

However, both the return of contribution statute and the death benefit statute indicate that the member shall have "nominated" his or her beneficiary. This "nomination" most assuredly requires that the member must have had the mental capacity to knowingly "nominate" a beneficiary.

There was a great deal of evidence presented indicating that Ms. Hope was progressively non compis mentis. Additionally, the evidence was uncontradicted that Petitioner, who was to be the new beneficiary, actively arranged for the change of beneficiary both on an insurance policy and on the State Benefits form. Petitioner went so far as to arrange for notaries at the hospital and to request that all future mail from the Retirement System be sent to her.

It was also uncontradicted that Ms. Stewart removed her aunt from the medical facility in Charlotte and moved her to a nursing home without informing or conferring with Ms. Hope's family. Further, even though one of Ms. Hope's children did not read and the other did not understand that he should have read the documents at the funeral home before he signed them, Mr. Stewart nonetheless arranged for payment of the funeral with what appears to be her aunt's insurance money, giving a token amount to Ms. Hope's sons.

2. The change of beneficiary from received by the State Retirement System on September 20, 1993, listing Deborah W. Stewart as beneficiary for accumulated contributions and death benefit on Barbara Hope was adequate and complete as to form when it was received by the Retirement System.

3. However, it is concluded the Respondent did not err in refusing to pay the retirement and death benefits to Petitioner

4. It is further concluded that based upon the evidence presented, Ms. Hope could not and in fact did not "nominate" Petitioner as the beneficiary of her retirement contributions or death benefit and the attempted change of beneficiary therefore was not effected.

Based upon the above Conclusions of Law, the undersigned makes the following:

**RECOMMENDATION**

That the benefits should be paid to the last properly designated beneficiaries, Anthony and Derrick Hope.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Board of Trustees of the Teachers' and State Employees' Retirement System.

This the 22nd day of July, 1994.

---

Dolores O. Nesnow  
Administrative Law Judge

**T**he North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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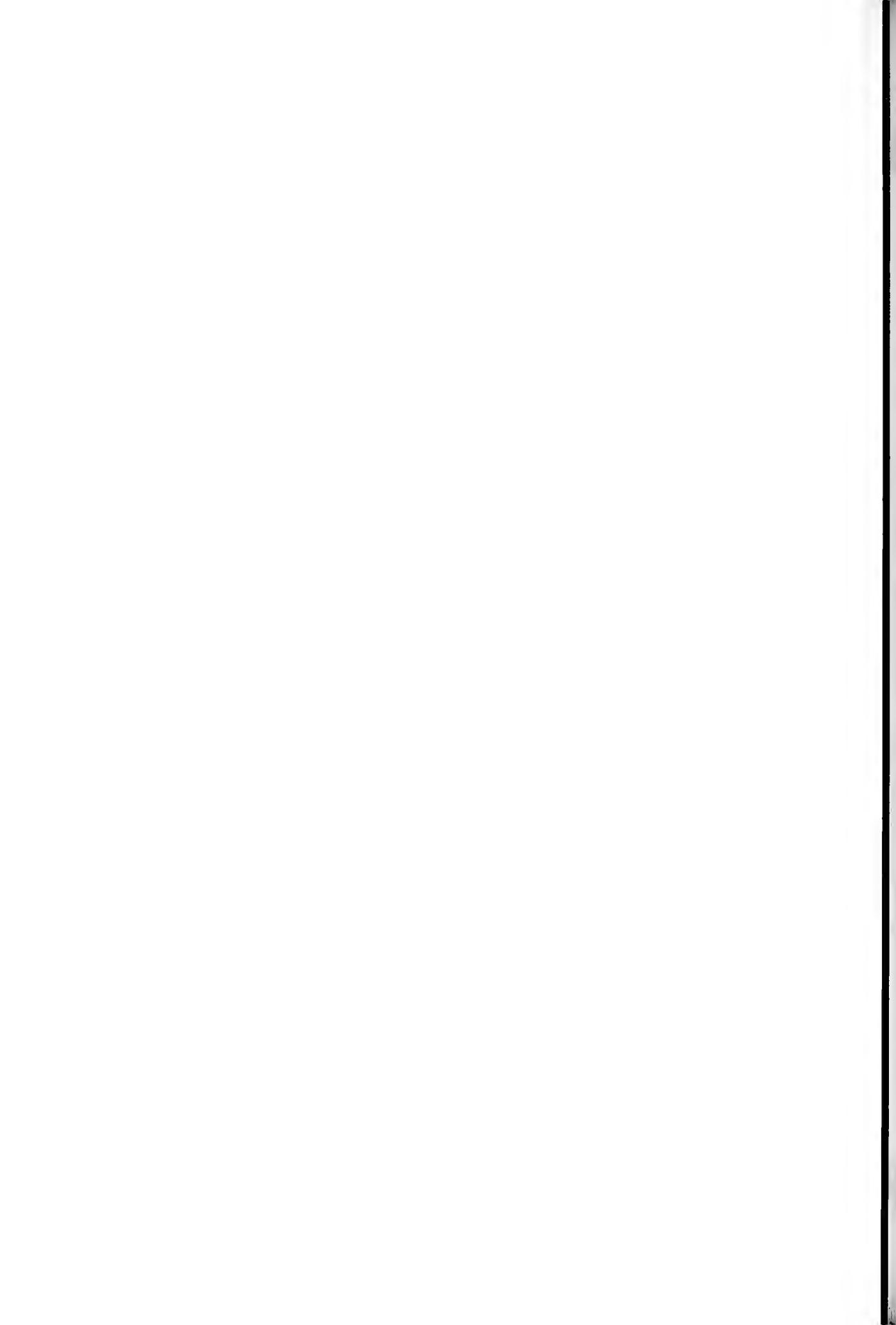
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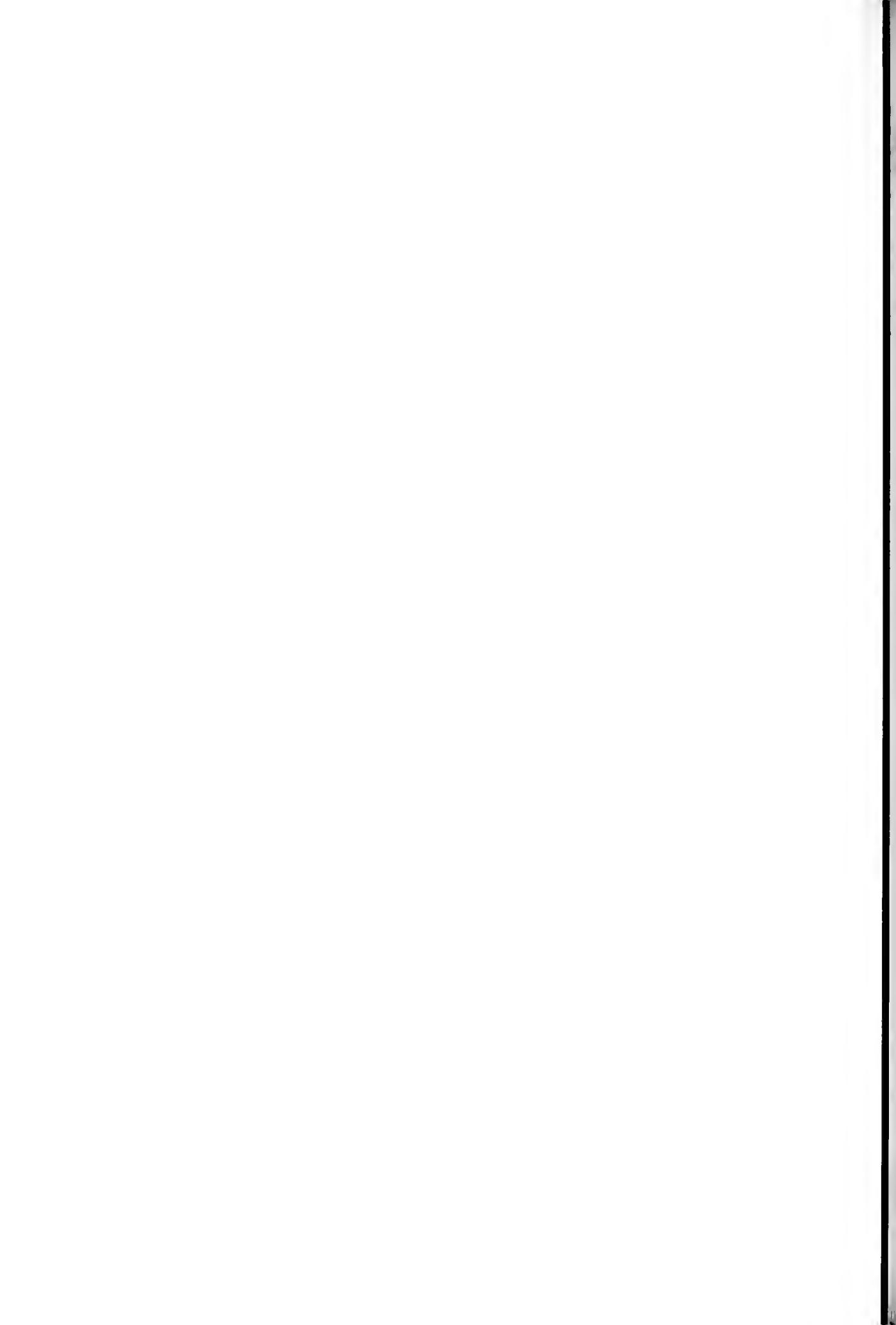
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